

ATTACHMENT 16

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Brian Dowling

April 11, 2014

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS) MDL NO. 2002
ANTITRUST LITIGATION) 08-md-02002
) _____)
THIS DOCUMENT RELATES TO:))
The Kroger Co. et al. v. United Egg)
Producers, Inc. et al.,)
No. 2:10-cv-06705 GP)
)

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30(b)(6) DEPOSITION OF SAFEWAY, INC.

DESIGNEE: BRIAN DOWLING

San Francisco, California

Friday, April 11, 2014

Reported by:

JANIS JENNINGS

CSR No. 3942, CLR, CCRR

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2 (Pages 2 to 5)

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April 11, 2014

3 (Pages 6 to 9)

6	8
1 E X H I B I T S	1 E X H I B I T S
2	2
3 NUMBER DESCRIPTION PAGE	3 NUMBER DESCRIPTION PAGE
4 Exhibit 1 Defendants' Amended Notice of 40	4 Exhibit 14 Fax dated 8/13/01 from Karen Brown 178
5 Deposition to Plaintiff Safeway, Inc.	5 Re: Progress Update; FMI-001099 - 1117
6 Pursuant to Fed.R.Civ.P. 30(b)(6)	6
7	7 Exhibit 15 Letter dated 10/17/01 From PETA to 184
8 Exhibit 2 Handwritten notes 44	8 Steven Burd; PETA 31 - 37
9	9
10 Exhibit 3 Assignment and Ratification Agreement 74	10 Exhibit 16 Fax dated 11/26/01 from Karen Brown 193
11 Regarding Antitrust Claims	11 Re: Animal Welfare Program Update;
12	12 FMI-001080
13 Exhibit 4 Email thread dated 3/29/06 from Brian 76	13
14 Dowling; SFWEGED00048506 - 48508	14 Exhibit 17 Copy of United Egg Producers Certified 198
15	15 brochure; SFWEG00001945 - 1952
16 Exhibit 5 Email thread dated 5/17/08 from Brian 77	16
17 Dowling; SFWEGED00001134	17 Exhibit 18 Letter dated 2/13/02 from PETA to 203
18	18 Brian Dowling; PETA 20 - 21
19 Exhibit 6 Email dated 6/4/08 from Megan Vincent 85	19
20 w/attachment "Animal Welfare";	20 Exhibit 19 Email thread dated 2/20/02 from 212
21 SFWEGED00024792 - 24795	21 Imarmer@kroger.com; FMI-002427 - 2429
22	22
23 Exhibit 7 Email thread dated 3/31/06 from Steve 101	23 Exhibit 20 Letter dated 3/14/02 from PETA to 221
24 Weiffenbach; SFWEGED00024001 - 24003	24 Brian Dowling; PETA 22 - 23
25	25
7	9
1 E X H I B I T S	1 E X H I B I T S
2	2
3 NUMBER DESCRIPTION PAGE	3 NUMBER DESCRIPTION PAGE
4 Exhibit 8 Memorandum dated 10/17/02 from Allie 111	4 Exhibit 21 Letter dated 5/10/02 from PETA to 229
5 Steck; UE0156322	5 Brian Dowling; PETA 24 - 25
6	6
7 Exhibit 9 FMI Meeting Notes November 29, 2000 114	7 Exhibit 22 News release dated 5/15/2000 "PETA 240
8 PETA; FMI-001209 - 1210	8 Calls Off Safeway Boycott";
9	9 FMI-000196 - 197
10 Exhibit 10 Fax dated 6/18/01 from Karen Brown 128	10
11 Re: Experts conference Call Summary;	11 Exhibit 23 Dallas Morning News article dated 271
12 FMI-001143 - 1152	12 5/16/02 "PETA Ready to Exonerate
13	13 Safeway"; CM00730871 - 730872
14 Exhibit 11 Fax dated 7/2/01 from Karen Brown 137	14
15 Re: Background for July 9 Meeting in	15 Exhibit 24 Letter dated 1/30/09 from Safeway, 273
16 Chicago; FMI-001129 - 1142	16 Inc.; SFWEGED00024897 - 24898
17	17
18 Exhibit 12 Memo dated 7/3/01 from Chuck Elste 157	18 Exhibit 25 Email thread dated 3/31/09 from Cathy 279
19 Subject: FMI Task Force on Animal	19 East; SFWEGED00039873 - 39875
20 Welfare Standards; UE0178685 - 178686	20
21	21 Exhibit 26 Press release dated 4/18/01 "FMI 281
22 Exhibit 13 Global Animal Welfare Challenges: 165	22 Establishes Policy and Program to
23 Various Perspectives A Marketplace	23 Address Animal Welfare";
24 Perspective; FMI-001714 - 1725	24 KRGEG00020436 - 20437
25	25

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Brian Dowling

April 11, 2014

4 (Pages 10 to 13)

<p style="text-align: center;">10</p> <table border="0" style="width: 100%;"> <thead> <tr> <th colspan="3" style="text-align: left;">E X H I B I T S</th> </tr> <tr> <th>NUMBER</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>Exhibit 27 Press release dated 4/18/01 "FMI Establishes Policy and Program to Address Animal Welfare"; MFI0274907 - 274908</td> <td>285</td> </tr> <tr> <td>9</td> <td>Exhibit 28 June 2002 Report FMI-NCCR Animal Welfare Program; CM00180840 - 180848</td> <td>287</td> </tr> <tr> <td>12</td> <td>Exhibit 29 Article dated 3/4/02 www.feedstuffs.com "FMI, NCCR issue report aimed at uniform husbandry"; 5017398 - 5017399</td> <td>291</td> </tr> <tr> <td>16</td> <td>Exhibit 30 Article "The Food Marketing Institute and the National Council of Chain Restaurants: Animal welfare and the retail food industry in the United States of America; CM00731181 - 731189</td> <td>294</td> </tr> <tr> <td>22</td> <td>Exhibit 31 Article dated 6/2/02 "Kroger to follow animals standard"; CM00730889 - 730890</td> <td>297</td> </tr> </tbody> </table>	E X H I B I T S			NUMBER	DESCRIPTION	PAGE	4	Exhibit 27 Press release dated 4/18/01 "FMI Establishes Policy and Program to Address Animal Welfare"; MFI0274907 - 274908	285	9	Exhibit 28 June 2002 Report FMI-NCCR Animal Welfare Program; CM00180840 - 180848	287	12	Exhibit 29 Article dated 3/4/02 www.feedstuffs.com "FMI, NCCR issue report aimed at uniform husbandry"; 5017398 - 5017399	291	16	Exhibit 30 Article "The Food Marketing Institute and the National Council of Chain Restaurants: Animal welfare and the retail food industry in the United States of America; CM00731181 - 731189	294	22	Exhibit 31 Article dated 6/2/02 "Kroger to follow animals standard"; CM00730889 - 730890	297	<p style="text-align: center;">12</p> <table border="0" style="width: 100%;"> <thead> <tr> <th colspan="3" style="text-align: left;">E X H I B I T S</th> </tr> <tr> <th>NUMBER</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>Exhibit 38 Letter dated 7/5/02 from PETA to Brian Dowling; PETA 27 - 28</td> <td>338</td> </tr> <tr> <td>7</td> <td>Exhibit 39 Letter dated 7/12/02 from Brian Dowling to PETA; PETA 30</td> <td>342</td> </tr> <tr> <td>10</td> <td>Exhibit 40 Letter dated 8/15/02 from Brian Dowling to PETA; PETA 29</td> <td>352</td> </tr> <tr> <td>13</td> <td>Exhibit 41 Fax dated 8/16/02 from Karen Brown Re: Animal Welfare Update; FMI-001066 - 1077</td> <td>359</td> </tr> <tr> <td>17</td> <td>Exhibit 42 Confidential Draft Animal Welfare Standards dated 12/12/00 Paul Bernish; FMI-000211 - 218</td> <td>370</td> </tr> <tr> <td>21</td> <td>Exhibit 43 An Economic Perspective on the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg Laying Flocks; NUCAL-08md2002-0000830 - 843</td> <td>374</td> </tr> </tbody> </table>	E X H I B I T S			NUMBER	DESCRIPTION	PAGE	4	Exhibit 38 Letter dated 7/5/02 from PETA to Brian Dowling; PETA 27 - 28	338	7	Exhibit 39 Letter dated 7/12/02 from Brian Dowling to PETA; PETA 30	342	10	Exhibit 40 Letter dated 8/15/02 from Brian Dowling to PETA; PETA 29	352	13	Exhibit 41 Fax dated 8/16/02 from Karen Brown Re: Animal Welfare Update; FMI-001066 - 1077	359	17	Exhibit 42 Confidential Draft Animal Welfare Standards dated 12/12/00 Paul Bernish; FMI-000211 - 218	370	21	Exhibit 43 An Economic Perspective on the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg Laying Flocks; NUCAL-08md2002-0000830 - 843	374
E X H I B I T S																																														
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April 11, 2014

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 SAN FRANCISCO, CALIFORNIA; FRIDAY, APRIL 11, 2014 2 9:10 A.M. 3 4 THE VIDEOGRAPHER: Good morning, ladies and gentlemen. We are on the record. The time is the 9:10 a.m. I am Frank Quirarte from Henderson Legal Services in Washington, D.C. The phone number is (202) 220-4158.</p> <p>9 This is a matter pending before the United States District Court for the Eastern District of Pennsylvania in the case captioned, In Re: Egg Products Antitrust Litigation, Case No. 2002-08-MD-02002.</p> <p>14 This is the beginning of Tape No. 1, Volume I in the deposition of Brian Dowling on April 11th, 2014. We are located at 275 Battery Street in San Francisco, California. This deposition is being taken on behalf of the defense.</p> <p>19 At this time, will counsel and all present please identify yourself for the record.</p> <p>21 MR. FONTECILLA: Good morning. Adrian Fontecilla with Proskauer Rose, LLP on behalf of defendant, Daybreak Foods, Inc.</p> <p>24 MS. ADENDORFF: Olivia Adendorff of Gibson, Dunn & Crutcher on behalf of defendant and</p>	<p style="text-align: right;">16</p> <p>1 A. Yes. 2 Q. And do you understand that even though we're here in a conference room, your testimony carries the same weight as it would if you were in court? 5 A. Yes. 6 Q. Have you ever had your deposition taken before? 8 A. No. 9 Q. So I want to go over a couple of ground rules. The first one is, let's try not to talk over each other today. I'll let you finish your answers, I just -- I would ask that you please let me finish my questions. 14 Do you understand that? 15 A. Yes. 16 Q. And the second rule, which is very important for the court reporter to get everything down is that we're going to need verbal responses today, no "uh-huhs" or nods of the heads, that's not going to come through. 21 Do you understand that? 22 A. Yes. 23 Q. If you need a break, please let me know, but I just ask that you answer any pending questions before taking a break.</p>
<p style="text-align: right;">15</p> <p>1 counterclaim plaintiffs, Cal-Maine Foods. 2 MR. MURRAY: Kevin Murray from Kenny Nachwalter on behalf of Safeway and the witness, Mr. Dowling. 5 THE VIDEOGRAPHER: Counsel on the phone? 6 MR. NARINE: Krishna Narine on behalf of the Indirect Purchaser plaintiffs. 8 THE VIDEOGRAPHER: And, Court Reporter, will you please swear in the witness. 10 11 BRIAN DOWLING, 12 The deponent herein, was sworn and testified as follows: 14 15 EXAMINATION 16 BY MR. FONTECILLA: 17 Q. Good morning, Mr. Dowling. 18 A. Good morning. 19 Q. Can you spell your full name for the record, please. 21 A. Brian, B-r-i-a-n, Dowling, D-o-w-l-i-n-g. 22 Q. And have you ever gone by any other names or aliases? 24 A. No. 25 Q. You understand that you're under oath today?</p>	<p style="text-align: right;">17</p> <p>1 Do you understand that? 2 A. Yes. 3 Q. If you don't understand a question, let me know and I'll rephrase it. Is that okay? 5 A. Yes. 6 Q. But if you do answer the question, I'll assume that you understood it. Understood? 8 A. Yes. 9 Q. Your attorney may object from time to time today, you still have to answer questions that are pending unless your attorney instructs you not to. 12 Do you understand that? 13 A. Yes. 14 Q. Okay. My questions today are going to focus for the time period 1999 through 2008, unless I otherwise indicate. 17 Do you understand that? 18 A. Yes. 19 Q. Is there anything medical or otherwise that would prohibit you from giving truthful and accurate testimony today? 22 A. No. 23 Q. Do you have any college or master's degrees? 24 A. I have an undergraduate degree and a master's degree.</p>

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Brian Dowling

April 11, 2014

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 Q. And from which colleges and in what years 2 were those?</p> <p>3 A. My undergraduate degree I -- from Cal State 4 Hayward here in Northern California, 1978. And I 5 have a master's degree in -- an MBA from St. Mary's 6 University in Moraga, California, and I received 7 that in 1992.</p> <p>8 Q. And when did you start working at Safeway?</p> <p>9 A. I worked for Safeway -- well, my -- in my 10 current position, in 1980. Wrong. Correction. 11 January 1979.</p> <p>12 Prior to that, I spent time in the stores, 13 five years in the stores as a clerk when I was going 14 to college and high school and -- and then I left 15 the company, came back to the company in 1979. So I 16 had about a two-year break in service, as they say 17 in our company. But I've -- I've been with the 18 company almost my entire working life.</p> <p>19 Q. And starting in 1979, what was your position 20 when you came back to the company then?</p> <p>21 A. I was a -- the title was research writer in 22 the corporate communications department.</p> <p>23 Q. And until when were you in that position?</p> <p>24 A. I was in that position from 1979 to 1985. 25 And then from going to -- from 1985 -- I -- I moved</p>	<p style="text-align: right;">20</p> <p>1 Washington, D.C. office of Safeway as well. 2 Q. Did you have a -- a title that was specific 3 to the Washington, D.C. office?</p> <p>4 A. I -- I -- my title was, at the time, 5 director of public affairs and government relations. 6 Q. And how long were you in that position?</p> <p>7 A. Until 1997. And from there, I moved to 8 Southern California. When Safeway acquired Vons, I 9 moved to Southern California as director of public 10 affairs at Vons, a division of Safeway, in -- I may 11 have -- may be off by a month or so here, but, like, 12 February of -- of 1997.</p> <p>13 Q. And until when were you in that position?</p> <p>14 A. I was in that position until December of 15 1998, and from there, moved corporate -- to 16 Safeway's corporate office into my current position 17 as vice president of public affairs.</p> <p>18 Q. And since 1998, you've had the same position 19 and title that you have now?</p> <p>20 A. Yes, that's right. My responsibilities have 21 changed slightly -- or, I mean, for a period of time 22 I had government relations responsibility and media 23 relations responsibility and then the job changed.</p> <p>24 I now -- and -- and I'm going to say the 25 job changed probably in, oh, gosh, 2003 where I</p>
<p style="text-align: right;">19</p> <p>1 from our corporate headquarters, which was located 2 in Oakland, to our Dallas division office as public 3 affairs manager for our Dallas operation and 4 government relations manager for our Texas division. 5 In Texas, we had three divisions in Texas at the 6 time, and so I -- I was there from '85 to '87 and 7 left there in April of '87.</p> <p>8 Q. And in what position did you move to in 9 April '87?</p> <p>10 A. I went to the Safeway's eastern division as 11 public affairs manager, which was located in the 12 Maryland area, Landover, Maryland.</p> <p>13 Q. And until when did you have that position?</p> <p>14 A. I had that position until 1989, and I went 15 to -- I moved back to Safeway's corporate 16 headquarters as corporate public affairs department 17 manager in February of 1989.</p> <p>18 Q. And until when did you have that position?</p> <p>19 A. Until I -- until it's -- until February of 20 1995.</p> <p>21 Q. And in February of 1995, what was the new 22 position that you took?</p> <p>23 A. I moved -- moved back to the eastern 24 division of Safeway and managed public affairs for 25 the eastern division again, but also managed the</p>	<p style="text-align: right;">21</p> <p>1 managed media relations, community relations, 2 external affairs, but from the time that I've been 3 there since 1998, I've managed, you know, external 4 affairs in all interactions with the media, outside 5 organizations, that sort of thing.</p> <p>6 Q. And before the job that you're in now 7 changed in 2003, as you describe it, what were your 8 roles and responsibilities since 1998?</p> <p>9 A. Managing media relations, dealing with press 10 inquiries from news media for a period of time, 11 between 1998 and 2003, I also had government 12 relations, so all of our activities at the state 13 level and at the federal level as well and managed 14 the activities of -- of that. And then in 2003, we 15 sort of broke that off and it was -- became sort of 16 separate, still part of the public affairs 17 government relations function, but I didn't manage 18 it after 2003.</p> <p>19 Q. And in your current position as vice</p> <p>20 president of public affairs, what has been your</p> <p>21 roles and responsibilities specific to animal</p> <p>22 welfare issues?</p> <p>23 A. Well, I mean, I think, you know, managing, 24 you know, our interactions with groups, external 25 groups, activist groups that have an interest in</p>

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April 11, 2014

7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 the -- in the issue, dealing with press inquiries 2 that come on the issue. You know, I -- I am, you 3 know, the guy who deals with outside groups that 4 have an interest in our business, stakeholders in 5 whatever form, I -- I manage those relationships, 6 deal with those relationships as they come up.</p> <p>7 Q. And other than dealing with press inquiries 8 and communications with external groups and activist 9 groups with respect to animal welfare issues, are 10 there any role -- other roles and responsibilities 11 that you handle as vice president of public affairs?</p> <p>12 A. I think I would describe my role as bringing 13 the various parties within the company together 14 to -- to sort of deal with the issues as they arise, 15 you know, and, you know, helping manage that.</p> <p>16 Q. And when you say "various parties within the 17 company," who are you referring to?</p> <p>18 A. You know, the people with responsibility for 19 marketing, merchandising, buying various species, 20 pork, you know, poultry, beef, and as these issues 21 have arisen and, you know, interacting with them, 22 gathering the facts on what we're doing, what we're 23 not doing, what positions we might want to take or 24 what should be positions we should be taking on 25 animal welfare issues. You know, I -- I, at one</p>	<p style="text-align: right;">24</p> <p>1 the issue of that -- that gets raised by the 2 activist groups, gestation stalls in the pork 3 industry, I would, you know, often times the first 4 point of contact by an activist group would be me. 5 And what I would often do early on in some of these 6 interactions would be to contact folks responsible, 7 have got responsibility for the buying function, the 8 merchandising, and the marketing function, and say, 9 here's the issue being raised. What's our -- what 10 are we doing? In some cases, we might have -- I 11 might have contact with folks on the manufacturing 12 side of our business. In some cases, I'd have also 13 interaction with -- with our trade association folks 14 as well.</p> <p>15 But I would -- again, I'll just stick to, I 16 think your question is about our own internal folks. 17 I would often go to them and say, this is the 18 question being raised, sort of help me understand, 19 you know, what -- you know, what -- how we should be 20 responding or not. I mean, is this an issue that we 21 should be concerned about? And, you know, the 22 people who manage that side of the business 23 typically have a lot of experience, a lot more 24 experience. They're the experts. And so I, more 25 often than not, am relying on them to guide me.</p>
<p style="text-align: right;">23</p> <p>1 point, describe myself as sort of the -- the 2 convener in some of these issues, but that's not 3 necessarily the case, only with animal welfare. 4 I mean, we -- we are dealing, you know, as 5 you might imagine during the course of a year with 6 hundreds of different issues and a broad range of 7 subject matter and the public affairs function 8 performs sort of the same function as it relates to, 9 you know, Greenpeace and their interest in seafood 10 or the farm workers as it relates to issues on -- on 11 the produce side of our business, you know, 12 interacting with our labor communications teams as 13 it relates to the unions representing our companies. 14 Public affairs is often in the position where you're 15 bringing people together to sort of discuss the 16 issue and develop a position, you know. That's, I 17 guess, the best way I would describe our role. 18 Q. And focusing specifically on animal welfare 19 issues. 20 A. Right. 21 Q. How -- can you describe your interactions 22 with these other groups within Safeway, and 23 specifically, your roles as to convening them as 24 you've described it. 25 A. Well, I mean, for instance, on , you know,</p>	<p style="text-align: right;">25</p> <p>1 Q. And -- 2 A. And guide the company. 3 Q. Excuse me, I didn't mean to interrupt. 4 A. That's all right. 5 Q. Between 1998 and the present, who at Safeway 6 has the responsibility of deciding or approving 7 Safeway's policies with respect to animal welfare 8 issues? 9 A. It's -- it's not any one individual. It's a 10 team of people that over time have had input on, 11 including members of the management team, but 12 it's -- it's a -- there's a core group of folks, 13 myself, people I think you've talked to, Cathy East 14 on -- in our Denver buying office as it relates to 15 issues related to pork and meat, you've talked to 16 Ginni Littlefield who does our audits. There's 17 another gentlemen that they work for, a guy named 18 Jim Sheeran who also has input on these issues as 19 well. And -- and it's that team that makes 20 recommendations or has made recommendations, had 21 discussions over an extended period of time, you 22 know, with members of the management team as we, you 23 know, take -- especially when we've taken public 24 positions on issues. 25 Q. When you reference the management team at</p>

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April 11, 2014

8 (Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 Safeway, are you including yourself? 2 A. Yes. 3 Q. And who else is included on the management 4 team? 5 A. Well, the management team of the company, 6 you know, is, you know, the people I report up 7 through. I would -- would consult with them, you 8 know, keep them informed. 9 Q. And who specifically are you referring to 10 from the time period of 1998 through today? 11 MR. MURRAY: Objection. Overly broad. 12 If you can answer, you can, but... 13 THE WITNESS: So you're -- you're -- you're 14 asking for specific names of people who I would have 15 interacted with on the issue. 16 BY MR. FONTECILLA: 17 Q. So we were talking about animal welfare 18 issues. 19 A. Yes. 20 Q. And I'm just trying to understand, who has 21 the responsibility or who is involved in approving 22 animal welfare policies that Safeway adopts, and you 23 mentioned that a core group of folks, including 24 Miss East and some others, makes recommendations to 25 you and the management team; is that correct?</p>	<p style="text-align: right;">28</p> <p>1 sort of who in that timeframe. So, again, 1990 -- 2 let me just refer back 1998 to 2008, during that -- 3 Q. Sure. Let's start in 1998. 4 A. Maybe I'll ask you to rephrase the question 5 so I can be clear in my answer. 6 Q. Sure. Starting in 1998, when was the first 7 time that Safeway considered a position with respect 8 to animal welfare issues as to egg suppliers? 9 A. Probably in, I'm going to say 2002, in that 10 timeframe. 11 Q. And what was the position that Safeway was 12 considering in 2002? 13 A. We were -- I -- I think -- again, it's -- 14 it's a long time ago. We had been -- I guess at -- 15 at that point in 2002, we were -- we had had 16 interaction with the Food Marketing Institute in 17 Washington, D.C. The industry had asked them to 18 bring together some experts on the issue and, you 19 know, and -- and there were guidelines that were 20 developed, you know, by FMI after they brought in 21 and consulted with experts across the various 22 species production groups, pork, meat, poultry. 23 And it was at that point -- it was probably 24 at that point then when we were looking at examining 25 the FMI guidelines where there was specific</p>
<p style="text-align: right;">27</p> <p>1 A. That's correct. 2 Q. And I'm trying to understand who considers 3 the recommendation in addition to yourself. 4 A. I would -- it would go all the way up 5 through our senior VP of public affairs, our 6 executive vice president as well. 7 Q. And other than the senior VP of public 8 affairs and the executive vice president and 9 yourself, who else would be involved in evaluating 10 or approving an animal welfare policy that was 11 recommended by the Safeway team? 12 A. That would largely be it. There -- there 13 may have been -- again, during that period of time, 14 other senior vice presidents, you know, here and 15 there on the marketing side of the business that 16 would have been aware, looped in, had discussions 17 with -- with us about positions we were taking. 18 Q. And do you recall specifically discussions 19 since 1998 through today about positions that 20 Safeway was considering taking with respect to the 21 animal welfare policies as they applied to egg 22 suppliers? 23 A. I -- I don't have clear recognition -- I 24 don't have a clear recall on exactly in, again, 25 we're talking about a long time ago, as to exactly</p>	<p style="text-align: right;">29</p> <p>1 reference to poultry where we first came across the 2 issue and when we first, you know, publicly 3 indicated that we would be following the FMI 4 guidelines. That would be my best recollection. 5 Q. So my question was actually much more 6 narrow. 7 A. Yeah. 8 Q. What is the specific position in 2002 that 9 Safeway was considering adopting as it relates to 10 animal welfare issues to egg suppliers? 11 A. I -- I can't recall. I'd have to -- my -- 12 my general recollection was that we wanted our 13 suppliers to follow the guidelines as outlined and 14 that we're -- we're -- that as FMI pulled together 15 guidelines on the humane treatment of -- of egg 16 laying hens, cage space, forced molting, policies 17 regarding debeaking. It was -- it was those 18 policies that we were looking at and considering. 19 Q. And prior to the consideration in 2002 by 20 Safeway of this position, had Safeway ever discussed 21 internally, to the best of your knowledge, any 22 potential position as to animal welfare issues for 23 its egg suppliers? 24 A. No, not -- not -- no, not that I can recall. 25 Q. And other than the consideration in 2002 of</p>

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Brian Dowling

April 11, 2014

9 (Pages 30 to 33)

<p style="text-align: right;">30</p> <p>1 a position as to animal welfare issues to egg 2 suppliers, when was the next time that Safeway 3 considered another position as to its animal welfare 4 issues to egg suppliers?</p> <p>5 A. Well, I -- I guess the way I would frame is 6 that -- that over time it evolved. But the next -- 7 to the best of my recollection the next time we 8 publicly enunciated a position as it related to -- 9 to eggs was in 2008.</p> <p>10 Q. And what was the position that Safeway was 11 considering in 2008?</p> <p>12 A. We -- well, again, it was -- it was there 13 were three pieces; there was one related to 14 controlled atmosphere stunning and poultry, there 15 was one related to gestation stalls, and in both 16 cases, we had specifically said that we were going 17 to be expressing a buying preference for -- for 18 those suppliers who were moving in the direction -- 19 moving in -- in the direction away from gestation 20 stalls toward controlled atmosphere stunning in 21 poultry and turkey. And with -- with eggs, 22 we had expressed a position that we were looking for 23 opportunities to purchase a greater quantity of 24 cage-free eggs, that was the position. If I had it 25 in front of me, I could be clearer about it.</p>	<p style="text-align: right;">32</p> <p>1 were involved in that, in that decision-making, 2 buying and merchandising team.</p> <p>3 Q. Do you remember any names at all?</p> <p>4 A. You know, I -- I'm not recalling. This --</p> <p>5 you're asking about in 2002. Yeah. In 2002, you 6 know, in 2008, we came out with a very specific set 7 of, you know, goals that we were looking for. In 8 2000 -- excuse me, in 2008. In 2002, you know, it 9 was sort of very early stage. We were still trying 10 to feel our way around the old issue of animal 11 welfare.</p> <p>12 MR. FONTECILLA: Move to strike as 13 nonresponsive.</p> <p>14 MR. MURRAY: Opposed. Opposed.</p> <p>15 BY MR. FONTECILLA:</p> <p>16 Q. Mr. Dowling, this is going to go a lot 17 quicker if you answer the specific questions that I 18 ask.</p> <p>19 MR. MURRAY: I -- you're not here to 20 instruct my client. You can ask questions and he 21 can answer them, but please do not give instructions 22 to my client on anything.</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. Mr. Dowling, like I said, this will go a lot 25 quicker --</p>
<p style="text-align: right;">31</p> <p>1 Q. So focusing -- excuse me.</p> <p>2 A. But their -- and excuse me. There was -- as 3 I recall, and it -- I -- you know, if I -- there 4 was -- there was a piece of that as it related to -- 5 broadly as it related to -- to cage space and -- and 6 it was not just cage-free eggs, but there were -- 7 there was another element to that, that if I had it 8 in front of me, I would be clearer.</p> <p>9 Q. And in 2002, you mentioned that Safeway was 10 considering a position with regards to animal 11 welfare standards as it applied to its egg supplier; 12 correct?</p> <p>13 A. That's right.</p> <p>14 Q. And specifically, Safeway was considering a 15 position regarding the animal welfare standards that 16 applied to suppliers of caged egg laying hens, eggs 17 produced by caged egg laying hens.</p> <p>18 A. Right.</p> <p>19 Q. And who was involved at Safeway in 20 considering that position in 2002?</p> <p>21 A. Let me -- let me think for a moment. The -- 22 let me just sort of, there were members of our 23 buying team, and I'm having difficulty sort of 24 recalling exactly who it was at the time that we 25 were, but it was members of our buying team that</p>	<p style="text-align: right;">33</p> <p>1 MR. MURRAY: This isn't a question.</p> <p>2 BY MR. FONTECILLA:</p> <p>3 Q. -- if you --</p> <p>4 MR. MURRAY: I object. You can ask a 5 question. You cannot give him instructions. Please 6 don't do that. Please don't do that. It's 7 improper.</p> <p>8 MR. FONTECILLA: Counsel --</p> <p>9 MR. MURRAY: Ask a question.</p> <p>10 MR. FONTECILLA: Counsel, lower your tone.</p> <p>11 MR. MURRAY: I'm not -- I'm not --</p> <p>12 MR. FONTECILLA: And let me finish my 13 question, please.</p> <p>14 MR. MURRAY: Okay. You can -- you can ask a 15 question.</p> <p>16 MR. FONTECILLA: Before you interrupt me.</p> <p>17 MR. MURRAY: And stop raising your tone to 18 me, please.</p> <p>19 BY MR. FONTECILLA:</p> <p>20 Q. Mr. Dowling, my specific question is: Do 21 you remember any names of anyone who was involved in 22 considering the position that Safeway was 23 considering with respect to animal welfare issues in 24 2002 as it relates to egg suppliers?</p> <p>25 A. No, I don't.</p>

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Brian Dowling

April 11, 2014

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 Q. Other than members of the buying team, do 2 you recall whether anyone else at Safeway was 3 involved in considering a position for animal 4 welfare issues for its egg suppliers?</p> <p>5 A. Could you repeat the question? I'm sorry.</p> <p>6 Q. Absolutely. Other than -- you mentioned in 7 2002, that Safeway was considering a position as it 8 related to animal welfare standards that applied to 9 the suppliers of eggs for caged egg laying hens; is 10 that right?</p> <p>11 A. Right. Correct.</p> <p>12 Q. And you mentioned that members of the buying 13 team were involved; is that right?</p> <p>14 A. That's correct.</p> <p>15 Q. And you were involved; right?</p> <p>16 A. Yes.</p> <p>17 Q. Was anyone else at Safeway involved?</p> <p>18 A. Yes, but I'm not recalling exactly who.</p> <p>19 Q. And you mentioned earlier that members of 20 the management team sometimes took recommendations 21 proposed by members of the buying team; is that 22 right?</p> <p>23 A. That's correct.</p> <p>24 Q. Which members of the management team in 25 2002, to the best of your knowledge, received or</p>	<p style="text-align: right;">36</p> <p>1 answer.</p> <p>2 THE WITNESS: No, I think -- I think because 3 in 2002, again, it was -- we were -- we were early 4 stage in trying to figure out our position on some 5 of these issues. I mean, as a company. You know, I 6 was managing inquiries from activists, we were 7 trying to sort of gauge where we should be as a 8 company, and, you know, there -- there wasn't this 9 sort of concentrated effort saying -- just sort of, 10 okay, what are we going to do on -- on these very -- 11 you know, we were relying, to a large degree at that 12 stage, on guidance that we were getting from FMI. 13 We were in the early stage of having some 14 interaction with some animal welfare scientists and 15 trying to sort of figure out, you know, where we 16 should be. It -- it was, you know -- so we -- we 17 hadn't -- it wasn't fully formed, and -- you know, 18 and that was -- that's why I'm having a little 19 difficulty, so... 20 BY MR. FONTICILLA: 21 Q. Sure. And I appreciate your trying to 22 recall back to 2002. 23 A. Sure. Sure. 24 Q. And I understand that that's a long time 25 ago.</p>
<p style="text-align: right;">35</p> <p>1 considered a recommendation as to animal welfare 2 issues as it applied to egg suppliers?</p> <p>3 A. You know, at that time, it would have been 4 largely an executive vice president, probably at 5 that level is as high as it would have gone.</p> <p>6 Q. And who was the executive vice president of 7 Safeway at that time?</p> <p>8 A. I -- Larree Renda.</p> <p>9 Q. Do you know if Larree Renda had any 10 involvement in considering the animal welfare 11 position that Safeway was considering as it applied 12 to egg suppliers in 2002?</p> <p>13 A. She had minimal involvement.</p> <p>14 Q. How do you spell her last name?</p> <p>15 A. R-e-n-d-a.</p> <p>16 Q. And other than Miss Renda and yourself, are 17 there any other members of the management team, to 18 the best of your knowledge, had involvement in 19 considering the animal welfare position in 2002 that 20 we've been discussing?</p> <p>21 A. I'm -- I'm not recalling specifically who.</p> <p>22 Q. And do you remember --</p> <p>23 A. The --</p> <p>24 Q. Go ahead.</p> <p>25 MR. MURRAY: Don't cut him off. You can</p>	<p style="text-align: right;">37</p> <p>1 A. Sure.</p> <p>2 Q. Now, what I'm trying to start with is when 3 you say "we were considering it, we were just 4 getting started," who are the "we" within Safeway 5 that was considering this position and working with 6 FMI?</p> <p>7 So my question that I asked is: Other than 8 Miss Renda and yourself at Safeway in 2002, who else 9 was involved in considering the animal welfare 10 position that Safeway was considering adopting for 11 its egg suppliers?</p> <p>12 A. It was heavily me. I mean, it was -- it was 13 me, me, and me on -- on a lot of these issues, but 14 with consultation with -- with experts. Again, it 15 wasn't just eggs. I mean, you know, eggs is -- 16 is -- it was, to a degree, a small part of it. It 17 was other species as well.</p> <p>18 Q. Okay.</p> <p>19 A. And there were -- there were -- at the time 20 on the meat side, there was a gentleman named Rory 21 Frink, who -- who's left the company. He and I 22 worked a lot together trying to figure out the meat 23 side, the slaughter side, you know, and trying to 24 sort of figure out where as a company we should be 25 and what we should be saying and what we should be</p>

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Brian Dowling

April 11, 2014

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 doing publicly on these issues. 2 Q. Is your testimony today that the only people 3 at Safeway, to the best of your knowledge, that had 4 involvement in 2002 in considering the animal 5 welfare issues that Safeway was going to adopt with 6 respect to its egg suppliers, members of the buying 7 team, Miss Renda, and yourself? 8 A. No. There were -- again, there was a 9 gentleman named Rory Frink. 10 Q. As to eggs specifically? 11 A. Not -- not eggs, it was meat. 12 Q. And my question is directed to -- 13 A. I know. I understand. I understand. I'll 14 have to search my memory harder for who with eggs, 15 because eggs was not the big issue. You know, it 16 was -- it was there were meat issues, there were 17 poultry issues, there were -- you know, there were 18 pork issues that we were trying to figure out as 19 well. 20 Q. Do you recall the Shameway campaign? 21 A. I do. 22 Q. Would you characterize it as a big issue for 23 Safeway? 24 MR. MURRAY: Object to the form of the 25 question. Vague. You can answer.</p>	<p style="text-align: right;">40</p> <p>1 in considering the policy in 2002, you said no. 2 But is there anyone else at Safeway who was 3 involved in considering the egg-specific animal 4 welfare policy that Safeway was going to adopt in 5 around 2002, other than members of the buying team, 6 whose names you can't remember, Miss Renda, and 7 yourself? 8 A. Not that I can recall. But you may help jog 9 my memory on some. 10 (Exhibit 1 was marked for identification 11 and attached hereto.) 12 BY MR. FONTECILLA: 13 Q. I've handed you, Mr. Dowling, what's been 14 marked as Exhibit 1. 15 A. Okay. 16 Q. Do you recognize this document? 17 A. I do. Well, yes. 18 Q. And how do you recognize this document? 19 A. Let me just, I'm sorry. Let me... 20 I was thinking this was something else. I 21 was thinking this was sort of the notice of 22 deposition for -- for me, but I guess not. 23 Q. So if I could direct your attention to page 24 8. 25 A. Sure.</p>
<p style="text-align: right;">39</p> <p>1 THE WITNESS: I'm sorry. 2 MR. MURRAY: I objected on the basis of 3 vagueness. 4 BY MR. FONTECILLA: 5 Q. You can answer. 6 A. Frame the question again one more time. 7 Q. Would you characterize the Shameway campaign 8 as a big issue for Safeway at that time? 9 MR. MURRAY: Same objection. 10 THE WITNESS: I -- it was an issue. I mean, 11 I think -- it wasn't -- it wasn't the overriding 12 issue at the time. It was -- you know, we deal with 13 it as a grocery company, a grocery company serving 14 hundreds of communities, it was one of many issues. 15 But it was an issue, sure. 16 We were trying to figure out what -- I'm -- 17 I'm in the business of managing the company's 18 reputation. We were not eager to have some outside 19 group, you know, out there, you know, in front of 20 our stores or on websites talking about our company 21 and calling it Shameway, and so we were -- yeah, so 22 it was an issue, but one of many. 23 BY MR. FONTECILLA: 24 Q. So you stated when I asked if it was just 25 Miss Renda, the buying team, and yourself involved</p>	<p style="text-align: right;">41</p> <p>1 Q. Do you see a section on page 8 titled 2 "Deposition Topics"?</p> <p>3 A. Okay. 4 Q. Does this refresh your recollection as to 5 whether you recognize this document? 6 A. It -- it does not. I mean, I... 7 Q. Have you ever seen this document before? 8 A. I don't recall seeing it. 9 Q. Do you understand -- 10 MR. MURRAY: Go through the whole thing. 11 THE WITNESS: Okay. 12 MR. MURRAY: Take your time. 13 THE WITNESS: I -- I don't recall seeing 14 this. 15 MR. MURRAY: Look through the whole thing. 16 THE WITNESS: Okay. All right. 17 Okay. Yeah. This is -- oh, 19 -- yeah, 19, 18 20, 22. Yeah. Okay. Yes, I have seen this 19 section. Yes. 20 BY MR. FONTECILLA: 21 Q. Have you seen this entire -- have you seen 22 this entire document before or just portions of it? 23 A. The -- the -- I've seen the entire document 24 and I -- I was focused on certain, I think it was 18 25 through 22 in particular.</p>

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Brian Dowling

April 11, 2014

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 Q. And you're referring to Topics 18 through 22 2 listed on pages 13 and 14. 3 A. Right. 4 Q. Do you -- please, finish reviewing the rest 5 of the document. 6 MR. MURRAY: And for the record, we are 7 designating Mr. Dowling as the corporate 8 representative for the 30(b)(6) on Topics 1E. 9 THE WITNESS: Yeah. Right. Sorry. 10 MR. MURRAY: Portions of 18, 19, 20, and 21 11 as they relate to contacts with outside entities; 18 12 and 19 and 20 as they relate to outside entities; 13 and the same with 21 and 22 for its entirety. 14 MR. FONTECILLA: For the record -- 15 MR. MURRAY: Those are the only topics that 16 he's a corporate representative on; otherwise, he's 17 testifying as a fact witness in his own capacity. 18 MR. FONTECILLA: For the record, we object 19 the designating a 30(b)(6) witness for certain 20 topics in the middle of his deposition is improper 21 and the time to do that was before the deposition, 22 and we reserve all rights to seek any available 23 remedies and hold this deposition open. 24 MR. MURRAY: We -- we told you what he was 25 going to be on, you didn't ask him in the beginning.</p>	<p style="text-align: right;">44</p> <p>1 MR. FONTECILLA: Counsel, it's -- it's 2 improper to be designating aspects, quote/unquote, 3 of different topics that you're designating this 4 witness in the middle of his deposition. I'll 5 proceed as he is testifying to these topics as the 6 corporate designee -- 7 MR. MURRAY: We stated this during 8 Miss Littlefield's deposition as well, which we'll 9 incorporate by reference. But his aspect of it, as 10 I stated then, was the interaction with the outside 11 influences to the company. 12 BY MR. FONTECILLA: 13 Q. Mr. Dowling, what did you do to prepare to 14 testify on behalf of the company today as to the 15 topics that you've indicated? 16 A. And I have a list of things that I -- 17 MR. MURRAY: You can refer to that. 18 THE WITNESS: Can I refer to this? 19 MR. FONTECILLA: Do you mind handing me that 20 document that you're referring to? 21 THE WITNESS: Sure. 22 MR. FONTECILLA: I'm going to mark this as 23 Exhibit 2. 24 THE WITNESS: Yeah. 25 (Exhibit 2 was marked for identification)</p>
<p style="text-align: right;">43</p> <p>1 You were getting his background information. And it 2 was -- there's nothing wrong with doing it now when 3 you start focusing in on topics after you talked 4 about his background. 5 BY MR. FONTECILLA: 6 Q. Mr. Dowling, do you understand that you are 7 here today to testify on -- as the corporate 8 designee for Safeway Inc.? 9 A. Yes, I do. 10 Q. And as to which topics in Exhibit 1 are you 11 prepared to testify as the corporate designee for 12 Safeway Inc.? 13 A. Specifically, again, I'm just -- 18, 19. Do 14 you want to read through this or -- 20, 21, and 22. 15 Q. So going forward, will you understand today 16 that when I say "you," I mean Safeway Inc. when I'm 17 asking questions related to those topics? 18 A. Yes. 19 Q. And if you answer questions in that regard, 20 I will understand it to mean that you were 21 testifying on behalf of Safeway. Is that okay? 22 A. Yes. 23 MR. MURRAY: And, again, it's only the 24 aspects of those because Virginia Littlefield is -- 25 was already the corporate representative for --</p>	<p style="text-align: right;">45</p> <p>1 and attached hereto.) 2 MR. MURRAY: Then let's go off the record 3 and please make a copy of it for me so I have it 4 while he's going under testimony about it. 5 MR. FONTECILLA: Okay. Let's go off the 6 record. 7 THE VIDEOGRAPHER: Going off the record. 8 The time is 9:40 a.m. 9 (Off the record.) 10 THE VIDEOGRAPHER: We're back on the record. 11 The time is 9:52 a.m. 12 BY MR. FONTECILLA: 13 Q. Mr. Dowling, you have in front of you 14 Exhibit 2. These are your handwritten notes; 15 correct? 16 A. Yes. 17 Q. This is a document you prepared in 18 preparation for today's deposition; correct? 19 A. Yes. 20 Q. And you prepared it to help remind you of 21 what you did to prepare for the deposition; is that 22 right? 23 A. Yes. 24 Q. And at the top right it says, 1E, 18, 19, 25 20, 21, and 22; right?</p>

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Brian Dowling

April 11, 2014

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 A. That's right, yeah. 2 Q. It doesn't say the word "aspects of it," 3 does it? 4 A. No. 5 Q. Okay. And then on the left, it says, 6 "Complaint" and "Deposition Notice." And what does 7 the third item say? Sorry, your handwriting -- 8 A. Sorry, "Ginni." I read the deposition of 9 Ginni Littlefield's deposition. 10 Q. You read Miss Virginia Littlefield's -- 11 A. Transcript. 12 Q. -- entire deposition transcript? 13 A. Yes. 14 Q. Was there anything in her deposition 15 transcript that you disagreed with? 16 A. No. 17 Q. Was there anything in -- 18 A. That I recall. 19 Q. Was there anything that you read in 20 Miss Littlefield's deposition transcript that was 21 inaccurate? 22 A. Not that I recall. 23 Q. And what does the fourth item on your 24 handwritten notes in Exhibit 2 say? 25 A. "Safeway press releases."</p>	<p style="text-align: right;">48</p> <p>1 communications were or what the time period was? 2 A. It would have been this time period from, 3 you know, from -- I'm going to say, you know, the 4 early 2000s to present. 5 Q. And the next item says "Communications with 6 Safeway, FMI"; is that right? 7 A. Yes. Right. 8 Q. Do you remember the substance or date ranges 9 of the emails between Safeway and FMI that you 10 reviewed in preparation for your deposition today? 11 A. Those would have been in the 2002, 2001 -- 12 excuse me, 2001, 2002, 2003 timeframe. 13 Q. And the next item is "Animal Welfare 14 Committee Agendas"; right? 15 A. Yes. 16 Q. And that's referring to Safeway's Animal 17 Welfare Committee formed in 2006; right? 18 A. That's correct. 19 Q. And there's been four of those meetings; 20 right? 21 A. That is correct. 22 Q. And you reviewed all four agendas? 23 A. I did not review all four agendas. I 24 reviewed probably two of the agendas, actually, that 25 I had record of.</p>
<p style="text-align: right;">47</p> <p>1 Q. Does that mean you -- I'm sorry. 2 A. No. Safeway press releases as it relates to 3 animal welfare. 4 Q. And which Safeway press releases -- did you 5 review Safeway press releases in preparation for 6 today's deposition? 7 A. I did. 8 Q. And how many did you review? 9 A. Primarily, two. 10 Q. And which ones were those? 11 A. 2008, our announcement on the three issues, 12 and then a more recent press release as it related 13 to gestation stalls and our sort of further position 14 on that subject. 15 Q. Did that one have anything to do with eggs? 16 A. No. 17 Q. And then the next item says "Communications 18 with PETA and HSUS." 19 What is that referring to? 20 A. Email communication with PETA and HSUS. 21 Q. How many emails with PETA and HSUS did you 22 review in preparation for your deposition today, if 23 any? 24 A. I -- I couldn't tell you for sure. 25 Q. Do you recall what the substance of those</p>	<p style="text-align: right;">49</p> <p>1 Q. Did any of the -- the agendas that you 2 reviewed discuss or reflect consideration of the UEP 3 guidelines? 4 A. Not specifically on the agenda itself, but 5 we had discussions at those meetings as it related 6 to eggs and UEP and animal welfare and eggs. 7 Q. And at which meetings was UEP discussed and 8 specifically meetings of the animal welfare 9 committee? 10 A. My best recollection is that we've had 11 discussions at each of the meetings generally on 12 eggs. The -- it was the first two meetings in 2006. 13 We also had a meeting in 2007 where we had 14 some discussion about eggs and UEP guidelines, 15 but -- but primarily more -- I think what I -- I 16 just want to clarify, these earlier meetings, it was 17 pretty broad. It -- it was not so much UEP, should 18 we, shouldn't we, what should we do. It was more 19 sort of the broader issue of -- of eggs and animal 20 welfare and having our various scientists sort of 21 provide us with their input and their guidance on 22 those issues. The meetings were, especially these 23 early meetings where we were talking about eggs, but 24 we were also talking about controlled atmosphere 25 stunning as it related to poultry and other things,</p>

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Brian Dowling

April 11, 2014

14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 were -- were sort of, no -- no pun intended, free 2 ranging. 3 I mean, if you've been around people like 4 Temple Grandin it's -- it's almost stream of 5 consciousness, but we had some discussion about 6 eggs, but in those meetings, it was just one element 7 of the discussions.</p> <p>8 Q. And what aspects of eggs were discussed at 9 these meetings? And let's take them one by one.</p> <p>10 A. Sure.</p> <p>11 Q. Let's start with the first one in 2006.</p> <p>12 What aspects of eggs were discussed in the meetings?</p> <p>13 A. Battery cages, cage space.</p> <p>14 Q. And what specifically was discussed at the 15 meetings with respect to battery cages?</p> <p>16 A. You know, it -- is there -- you know, we, as 17 a company, were asking the scientists for their 18 guidance on -- is there an issue, we're being -- we 19 were -- we were saying to them, we're being told by 20 the -- the activists, in particular, that there's an 21 issue as it relates to cage space, is that something 22 that we should be concerned about as a company? Is 23 there an issue there?</p> <p>24 And -- and it was -- it was them, the 25 scientists, that are guiding us and sort of telling</p>	<p style="text-align: right;">52</p> <p>1 on eggs.</p> <p>2 A. Yeah, I understand.</p> <p>3 Q. So the -- so in 2006, at -- at this first 4 meeting, the Safeway Animal Welfare Committee 5 considered recommendations from scientists to 6 increase the cage space for egg laying hens.</p> <p>7 A. That's right. We didn't come to any 8 conclusion, however. We just -- we'd -- again, you 9 would have to be at the meeting. It was more a 10 free-flowing discussion, help us understand this, 11 what we ought to be doing, you know, as -- as a 12 company, should we be taking independent positions 13 separate and apart from others in the industry or 14 not. It was, you know, and it was more the 15 scientists educating us on the issues.</p> <p>16 Q. And was UEP discussed at that first meeting?</p> <p>17 A. Not that I recall specifically at that 18 meeting. It -- I'll just say it probably was, but I 19 cannot honestly recall the -- you know, I -- I would 20 guess that it was. I'll just maybe reframe my 21 answer that way.</p> <p>22 Q. And why was Safeway in 2006 considering an 23 increase to its cage space standards for egg laying 24 hens?</p> <p>25 MR. MURRAY: Objection. It mischaracterizes</p>
<p style="text-align: right;">51</p> <p>1 us, you know, yeah, there's an issue, there's a 2 space issue, you know, and it was -- that's the way 3 those discussions went.</p> <p>4 Q. In 2006, what issues related to cage space 5 were the scientists raising with the committee that 6 you're referring to?</p> <p>7 A. That there is a -- an issue as it related 8 to cage space that needs to be addressed by the 9 industry.</p> <p>10 Q. And what was the issue in 2006?</p> <p>11 A. There -- there should be more space given to 12 the animal. I mean, it was -- I mean, again, I'll 13 just -- I don't mean to -- we were, me in 14 particular, were pretty unsophisticated as it 15 related, even at that stage, you know, we were -- 16 even -- even though it's 2006, you know, we -- we 17 were trying to feel our way around even at that 18 stage on some of these issues.</p> <p>19 But, again, eggs was one of them, but there 20 were others that we were sort of dealing with that 21 were sort of bigger at the time in '06, you know, 22 controlled atmosphere stunning was a big issue.</p> <p>23 Q. And --</p> <p>24 A. Gestation stalls was a big issues too.</p> <p>25 Q. And we're going to focus specifically on --</p>	<p style="text-align: right;">53</p> <p>1 his testimony.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: Reframe -- ask the question 4 again, please.</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. Sure. You testified that in 2006, at this 7 first meeting, Safeway was considering a potential 8 increase to the cage space requirements of its egg 9 suppliers; right?</p> <p>10 MR. MURRAY: Same objection. It 11 mischaracterizes the testimony.</p> <p>12 MR. FONTECILLA: Counsel, please let me 13 finish my question before you put your objection on 14 the record --</p> <p>15 MR. MURRAY: Okay.</p> <p>16 MR. FONTECILLA: -- that way we can move 17 forward a little quicker. Let me rephrase again.</p> <p>18 THE WITNESS: Yeah, we -- we weren't so 19 much -- I mean, we're not a manufacturer, we're a 20 retailer. We were trying to establish, you know, 21 where, as a company, we should be positioning 22 ourselves on some of these issues. It wasn't us 23 saying, we want more cages -- it was -- it was us 24 more simply trying to understand the issue. We 25 weren't saying that, you know, the cage space ought</p>

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Brian Dowling

April 11, 2014

15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 to be, you know, 11 by 7, we were -- because, again, 2 we're -- we're a retailer, and...</p> <p>3 BY MR. FONTECILLA:</p> <p>4 Q. Right. And at the meeting, the Animal 5 Welfare Committee meetings are a forum where Safeway 6 and its stakeholders who are well versed in these 7 issues can discuss potential changes to Safeway's 8 requirements; right?</p> <p>9 A. Right.</p> <p>10 Q. And part of that involves getting input from 11 scientists; right?</p> <p>12 A. Yes.</p> <p>13 Q. And part of that involves, as you described, 14 kind of an open discussion --</p> <p>15 A. Right.</p> <p>16 Q. -- about what's going on in the industry; is 17 that right?</p> <p>18 A. Right.</p> <p>19 Q. And specifically, with regard to Safeway's 20 consideration of increasing the cage space 21 requirements in 2006, what was considered by Safeway 22 in that 2006 meeting?</p> <p>23 MR. MURRAY: Objection. It mischaracterizes 24 his testimony. 25 ///</p>	<p style="text-align: right;">56</p> <p>1 the expert.</p> <p>2 Q. And did Safeway consider any other 3 information or studies or research other than what 4 Miss Mench was presenting to the committee at that 5 meeting?</p> <p>6 A. No.</p> <p>7 Q. And at the next meeting, was that in 2007?</p> <p>8 A. Yes.</p> <p>9 Q. And at that meeting, what was discussed 10 specifically with regards to animal welfare issues 11 to caged egg laying hens?</p> <p>12 A. More of the same. You know, because we 13 hadn't formed a -- a specific policy even at that 14 point and some might wonder why it took so long, why 15 it was taking so long, but we hadn't -- we hadn't.</p> <p>16 It was -- it was more of -- but, boy, I'll 17 tell you, it -- it was in -- in '07 and subsequent 18 to that, it was a minor issue. It -- it was -- it 19 was less of an issue, but it was more of the same 20 discussion around egg laying hens and animal welfare 21 issues generally, and it wasn't just Joy. I mean, 22 you know, Janice Swanson would -- would opine on it, 23 as well as would Temple Grandin as well.</p> <p>24 And, again, you'd have to be at one of those 25 meetings. I would say that I did a poor job -- we</p>
<p style="text-align: right;">55</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Let me ask you this: Is it -- am I correct 3 that your testimony is that at the 2006 meeting, 4 Safeway considered a potential increase to the cage 5 space requirements that were in place in the 6 industry at that time?</p> <p>7 A. I -- we were -- we were trying to do more 8 than anything -- at that stage, we were trying to 9 figure out whether or not we ought to be -- I mean, 10 we were just wanting to understand from the Joy 11 Menches of the world, who were the experts at UC 12 Davis, is this cage space thing that keeps getting 13 raised by the activists, is this something, is this 14 a real issue, are -- is this a valid issue. And at 15 the time, Joy was saying, yes, there -- there's an 16 issue.</p> <p>17 Q. And the issue was that the cage space 18 requirements, some scientists were suggesting to 19 increase the cage space requirements that were in 20 place at that time; is that right?</p> <p>21 A. That -- that's correct.</p> <p>22 Q. And when Safeway was discussing that at the 23 2006 meeting, what specifically did it take into 24 consideration or what information did it consider?</p> <p>25 A. Joy's point of view on it because she was</p>	<p style="text-align: right;">57</p> <p>1 did a poor job of sort of controlling the flow of 2 them, of those meetings, because sometimes we would 3 come away from them without real clarity as to sort 4 of where we -- we should be on some of this. And 5 that's where I think it's -- it's valuable on the 6 one hand as the committee was to us. We found 7 that -- that there was conflicting opinions between 8 the scientists on some of these issues, specifically 9 as it relates to eggs. We -- we would often -- some 10 would come away from those meetings scratching our 11 heads rather than necessarily having perfect clarity 12 as to where we ought to be going on these, some of 13 these issues.</p> <p>14 So -- so that was a point of frustration 15 that's -- that we did not publicly talk about, but 16 I'm talking about it now.</p> <p>17 Q. And when you mentioned that it was a minor 18 issue, are you referring to the caged egg laying 19 hens' space requirements that were discussed at the 20 2006 meeting being less of an issue at the 2007 21 meeting?</p> <p>22 A. It -- it was about the same in terms of its 23 space on the agenda and the time that we allotted to 24 it.</p> <p>25 Q. Was Safeway still considering at the meeting</p>

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Brian Dowling

April 11, 2014

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 in 2007, potentially increasing the cage space 2 requirements for caged egg laying hens?</p> <p>3 MR. MURRAY: Objection. Mischaracterizes 4 his testimony.</p> <p>5 THE WITNESS: Again, we were -- we were 6 seeking recommendations, seeking input information 7 about sort of what we should be -- what positions we 8 should be taking publicly on these -- on -- on that 9 particular issue. Cage space in particular, battery 10 cages as it was being -- yeah.</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. And the information and recommendations that 13 you were receiving as to positions that Safeway was 14 considering, in part, related to a potential 15 increase of the cage space requirements that were in 16 place at that time; right?</p> <p>17 MR. MURRAY: Objection. Mischaracterizes 18 his testimony.</p> <p>19 THE WITNESS: I mean, that was -- that 20 was -- yeah, we -- we were talking about cage space 21 issues and -- and wanting to understand it. I don't 22 mean to be, you know.</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. Sure. Was the issue to -- was the issue to 25 increase this cage space requirement and whether</p>	<p style="text-align: right;">60</p> <p>1 never be able -- because we said, should we just be 2 going -- I remember asking the question stupidly, 3 "Should we be going to cage free?" She said, 4 "There's no way to go to cage-free. You'll never be 5 able to supply your company."</p> <p>6 Q. At either the 2006 or 2007 meeting, did the 7 Animal Welfare Committee make a recommendation to 8 anyone about caged egg laying hens' space 9 requirements?</p> <p>10 A. Not a specific recommendation.</p> <p>11 Q. And why not?</p> <p>12 A. It just -- it was the way those meetings 13 went. I mean, it was -- it was more, here's our 14 opinion. You guys are, you know, can do what you 15 choose to do, but it was -- it was more of an 16 opinion. They didn't -- the scientists didn't say, 17 our recommendation is X. But they did say, again, 18 they -- they pointed out the issues related to 19 cage-free eggs, pointed out the issues as it related 20 to space.</p> <p>21 Q. So the Animal Welfare Committee didn't make 22 any recommendations as to the space, the cage 23 space issue --</p> <p>24 A. Not coming out of those meetings.</p> <p>25 Q. And has the Animal Welfare Committee ever</p>
<p style="text-align: right;">59</p> <p>1 that was a position that Safeway wanted to adopt?</p> <p>2 A. Well, it wasn't so much Safeway. Yeah, it 3 was -- it was -- again, it wasn't so much, it was 4 what our -- what our supplier should be doing, you 5 know, and -- and what should the industry be doing. 6 I mean, and what -- what -- again, it was -- it was 7 not so much Safeway, it was, you know, again, it 8 was -- it was, was there an issue here? Are these 9 animals being mistreated? Is the -- is the size of 10 the cage space, as it existed then, is it too small? 11 Is the animal, that confinement doing harm to the 12 animal, and -- and should -- should there be, you 13 know, a position that we ought to be taking on this?</p> <p>14 Should we -- and we -- we had some 15 discussion even then about sort of the whole issue 16 of cage-free eggs and, you know, and -- you know, 17 what are the merits or demerits of cage-free eggs. 18 And I remember, you know, Joy Mench talking about, 19 you know, problems with that, too, that on the one 20 hand good, but on the other hand, there are some 21 issues, safety issues with -- with egg laying hens 22 there as well.</p> <p>23 So, I mean, her -- her guidance there was, 24 hey, that's not your -- that's not the be all, end 25 all. There's not enough space. You guys would</p>	<p style="text-align: right;">61</p> <p>1 made any recommendations or delivered any opinions 2 to the Safeway management team related to the space 3 requirements for caged egg laying hens?</p> <p>4 A. The management team being me, Jim Sheeran, 5 Cathy East, Ginni Littlefield, the committee, the 6 Safeway members of the committee, they -- they've 7 made recommendations on things like -- again, I'm 8 getting -- I'm very back into the territory of the 9 other issues. They have -- they have said, you 10 know, on gestation stalls and CAK and on eggs, 11 sorry.</p> <p>12 Q. So let me rephrase the question.</p> <p>13 A. Sorry.</p> <p>14 Q. Has the Animal Welfare Committee ever made 15 any recommendations or delivered any opinions to the 16 Safeway management team related specifically to the 17 space requirements for caged egg laying hens?</p> <p>18 A. No.</p> <p>19 Q. And going back to Exhibit 2, it says, 20 "Safeway sustainability statement." Do you see 21 that, about halfway down?</p> <p>22 A. What -- what page are you on?</p> <p>23 Q. Exhibit 2.</p> <p>24 A. Oh, excuse me. Sorry. This is Exhibit 2. 25 Sorry. Yes. Right.</p>

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April 11, 2014

17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 Q. And what -- and what did you review that's 2 referenced in that item?</p> <p>3 A. I -- I just went back on our website to look 4 at our sustainability statements as it relates to 5 animal welfare, and -- and I just wanted to be -- 6 just refresh my memory.</p> <p>7 Q. Did -- did Safeway release -- when was the 8 first time that Safeway released a sustainability 9 statement?</p> <p>10 A. Well, published a report probably going 11 back, sustain -- CSR sustainability, probably...</p> <p>12 Q. And what does CSR stand for?</p> <p>13 A. Corporate social responsibility. It's sort 14 of -- sort of -- let me just sort of think about 15 the -- the timing on that. Probably seven years 16 ago, six years ago.</p> <p>17 Q. And did the first CSR statement include any 18 reference to the animal welfare standards that would 19 apply to egg suppliers of caged egg laying hens?</p> <p>20 A. It did not. It talked about, generally 21 about Safeway having an Animal Welfare Committee, 22 but it didn't specifically talk about eggs as I -- 23 to the best of my knowledge.</p> <p>24 Q. And the first one was in or around 2007?</p> <p>25 A. Yeah, I'm going to say 2006 -- 2000 -- I</p>	<p style="text-align: right;">64</p> <p>1 and reviewed the -- the guidelines.</p> <p>2 Q. And --</p> <p>3 A. Let me correct. I also had a -- I also 4 looked at a document that showed UEP guidelines 5 going back to 2002, and that was -- but I -- but my 6 recent -- my most recent was when I took this note, 7 it was looking at the website just within the last 8 couple of days.</p> <p>9 Q. When you reviewed the 2002 UEP guidelines in 10 preparation for your deposition, was that the first 11 time you had ever seen that document?</p> <p>12 A. No, it wasn't.</p> <p>13 Q. When was the first time that you had seen 14 2002 UEP guidelines?</p> <p>15 A. Well, probably -- sorry. Probably going 16 back to 2002, 2003, it may -- it may be even 2001.</p> <p>17 I'd have to --</p> <p>18 Q. And did you review that document when 19 Safeway was considering its position in 2002, as 20 we've discussed earlier, with respect to its animal 21 welfare standards for egg suppliers?</p> <p>22 A. My -- my best recollection is, I would 23 have -- I would have generally looked at it, but 24 not, not in any great detail.</p> <p>25 Back in '02, '01, '02, but '02 in particular</p>
<p style="text-align: right;">63</p> <p>1 would have to, but, yes.</p> <p>2 Q. And since then, have Safeway's CSR 3 statements ever referenced the animal welfare 4 standards that would apply to Safeway's egg 5 suppliers of caged egg laying hens?</p> <p>6 A. I -- I'd have to look. We -- we publish an 7 annual sustainability or a CSR report, but to the -- 8 and I believe in '08, and probably '09 we talked 9 about eggs briefly. There might have been a 10 sentence or two about eggs. I'd have to look.</p> <p>11 Q. And would that be specifically as to the 12 cage-free --</p> <p>13 A. Yes.</p> <p>14 Q. -- issue?</p> <p>15 A. Yes. In increasing, our interest in 16 increasing the quantity of cage-free eggs that we'd 17 like to purchase.</p> <p>18 Q. And the next item on Exhibit 2 says, "UEP 19 guidelines from website." That says you reviewed 20 them; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And do you remember which year UEP 23 guidelines you reviewed?</p> <p>24 A. I just -- just recently reviewed it within 25 the last few days. I just went to the UEP website</p>	<p style="text-align: right;">65</p> <p>1 when we'd had this -- about the Shameway campaign 2 and FMI had gone to the various sort of species, you 3 know, and -- and it was in the context of reviewing 4 a document tied in with FMI that I would have first 5 seen UEP guidelines mentioned and become familiar 6 generally with UEP guidelines.</p> <p>7 And the last thing I'll say about -- you 8 know, if -- and where -- where -- you're probably 9 frustrated with me. If I have a -- my expertise 10 here is -- is -- my expertise is in dealing with 11 outside groups. I mean, UEP guidelines, I know sort 12 of about debeaking, I know about forced molting, 13 generally I know about cage space and cage-free. 14 And -- but my -- my knowledge is -- is -- I've got 15 greater knowledge, for instance, as it relates to 16 things like gestation stalls, it's been a more 17 current issue.</p> <p>18 But UEP eggs is where my -- my knowledge 19 is -- is less, let's just say that, so...</p> <p>20 Q. And I'm talking specifically about the 21 document that you reviewed --</p> <p>22 A. Yeah.</p> <p>23 Q. -- for this deposition that was titled the 24 2002 UEP Guidelines. Do you remember that document?</p> <p>25 A. Yes.</p>

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Brian Dowling

April 11, 2014

18 (Pages 66 to 69)

66	68
<p>1 Q. And you -- you'd testified earlier that you 2 had reviewed it for the first time sometime in or 3 around 2000 to 2002 --</p> <p>4 A. Right.</p> <p>5 Q. -- well, I guess 2002; right?</p> <p>6 A. Right.</p> <p>7 Q. And my question was: In that first instance 8 when you reviewed that document in 2002, as you 9 testified, was that in connection with your 10 testimony earlier about Safeway considering in 2002 11 a potential position as to its animal welfare 12 policies for caged egg laying hens?</p> <p>13 A. Yes.</p> <p>14 Q. And the next statement here says you have 15 reviewed interrogatory responses. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What do you recall about the interrogatory 18 responses that you reviewed specifically in 19 preparation for this deposition?</p> <p>20 A. I looked at them very briefly, and I -- if 21 you have to ask -- if you asked me to define 22 interrogatory responses, I -- I would struggle. But 23 I -- I looked at them briefly.</p> <p>24 Q. Is -- do you understand that the 25 interrogatory responses are responses given by</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. When did you speak with Cathy East in 4 preparation for deposition?</p> <p>5 A. Yesterday.</p> <p>6 Q. And how long did you speak with Cathy East?</p> <p>7 A. Probably ten minutes.</p> <p>8 Q. And what did you discuss?</p> <p>9 A. I -- I wanted to recall the Animal Welfare 10 Committee meetings when they happened. I was 11 struggling a bit trying to -- with my -- my 12 calendars to exactly when they happened. I had 13 one -- I -- so that was what -- what I said, jog my 14 memory, and she helped me with that.</p> <p>15 Q. And did you two discuss the cage space 16 requirements related to caged egg laying hens?</p> <p>17 A. We did not.</p> <p>18 Q. Did you discuss the UEP guidelines?</p> <p>19 A. No.</p> <p>20 Q. Did you discuss any other animal welfare 21 issues as they apply to caged egg laying hens of 22 Safeway's egg suppliers?</p> <p>23 A. Yesterday?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p>
67	69
<p>1 Safeway in connection with this litigation?</p> <p>2 A. Yes.</p> <p>3 Q. And do you remember the substance of the 4 responses that you reviewed?</p> <p>5 A. I'd have to -- not -- not specifically right 6 at the moment.</p> <p>7 Q. And how about generally?</p> <p>8 A. Generally, yes.</p> <p>9 Q. And what do you remember generally about the 10 responses?</p> <p>11 A. Very little. I couldn't even recite it to 12 you right now.</p> <p>13 Q. And do you -- when you reviewed the 14 responses, did you disagree with the accuracy of any 15 of the responses?</p> <p>16 A. No. I wish I had them in front of me to -- 17 to review again, but I -- I don't recall disagreeing 18 with the accuracy of any of the responses.</p> <p>19 Q. Do you remember whether you, in reviewing 20 the responses, believed that there should have been 21 additional information added to the response?</p> <p>22 A. I don't -- I don't recall seeing that there 23 was a need for that, no.</p> <p>24 Q. And the next item on Exhibit 2 says, "Talked 25 to Cathy East."</p>	<p>1 Q. The next -- we'll slow down for the court 2 reporter so she can get it down.</p> <p>3 The next item, or in that same item it says, 4 "Talked to Jonathan Mages"?</p> <p>5 A. Mayes, M-a-y-e-s.</p> <p>6 Q. And who is Mr. Mayes?</p> <p>7 A. He's my boss.</p> <p>8 Q. And what did you and Mr. Mayes discuss in 9 preparation for this deposition?</p> <p>10 A. Our -- our -- the trade associations that we 11 belong to.</p> <p>12 Q. When you say "we," you mean Safeway?</p> <p>13 A. Yes, Safeway.</p> <p>14 Q. And did you and Mr. Mayes discuss the UEP 15 guidelines?</p> <p>16 A. We did not.</p> <p>17 Q. Did you discuss the cage space requirements 18 for Safeway's egg suppliers?</p> <p>19 A. No.</p> <p>20 Q. Did you discuss any animal welfare issues as 21 they relate to Safeway's egg suppliers of caged egg 22 laying hens?</p> <p>23 A. No.</p> <p>24 Q. Has Jonathan Mayes been employed with 25 Safeway since 1988?</p>

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Brian Dowling

April 11, 2014

19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 A. He has. 2 Q. Has he always been your boss? 3 A. No. 4 Q. Do you know what positions Mr. Mayes was in 5 before he was in the position he is in now? 6 A. He was vice president of government relations. 8 Q. Do you know whether Mr. Mayes has had any 9 involvement in Safeway's consideration of potential 10 policies or positions with respect to egg suppliers 11 and the animal welfare issues that Safeway requires 12 of Safeway's egg suppliers? 13 A. He's had very little. Since I've reported to him, I -- I keep him apprised of any inquiries that we have, positions that we take, you know, we've -- we've had. 17 Since I've reported to him we've had an Animal Welfare Committee meeting, he approves my travel to go, we've had the meetings in Denver, approves my travel. He's generally aware of the work that I do as it relates to animal welfare, but that's about it. 23 Q. And my question was specifically as to the 24 animal welfare issues we've been discussing for 25 caged egg laying hens.</p>	<p style="text-align: right;">72</p> <p>1 role in sort of looking at any sort of draft 2 statements that we would make. I mean, he would 3 review that. But it would be -- it would be members 4 of the -- ultimately of the marketing and the 5 merchandising management team that would be engaged 6 in decision-making about that. 7 BY MR. FONTECILLA: 8 Q. And do you recall who was in those roles in 9 the marketing and merchandising management team in 10 or around 2002? 11 A. That's where I'm -- that's where I'm struggling a bit. I have better recall as it relates to other issues that were on the meat side, the pork side. I know you're not interested in that. So in 2002 -- you know, and then -- I'm -- I'm not recalling exactly who. 17 Q. And then the next item on Exhibit 2 says, 18 "FMI." 19 A. Yes. 20 Q. What is that referring to in terms of your 21 preparation? 22 A. I was reviewing, you know, my trying to recall any interaction that I had with FMI as it related to animal welfare issues going back to 2001, 2002.</p>
<p style="text-align: right;">71</p> <p>1 A. Right. 2 Q. And your testimony was that he had very 3 little participation; is that right? 4 A. Yes. 5 Q. Can you describe the participation that he 6 has had? 7 A. Just being kept informed on -- on positions we're taking, provide him with an opportunity to provide any input, he provides very little, if any, input on any of that. He leaves that to -- to me and the committee. 12 Q. And if Safeway was considering publicly 13 adopting a position as to an animal welfare issue 14 for its egg suppliers, who would have involvement in 15 authorizing Safeway's public statement in that 16 respect? 17 MR. MURRAY: Objection. Calls for 18 speculation. 19 You can answer, if you know. 20 THE WITNESS: Again, it would be a cross 21 section of members of the management team, primarily 22 on the buying and the merchandising side, on the egg 23 side of the business who would -- would be involved 24 in that. 25 But also ultimately, Jonathan would have a</p>	<p style="text-align: right;">73</p> <p>1 Q. What does the last item on Exhibit 2 refer 2 to? 3 A. Kevin and Jim. Why am I having a -- all this pressure is giving me a mind deaf. Kevin and Jim. Jim Sheeran. Gosh. 6 Q. Did you meet with Mr. Sheeran in preparation 7 for your deposition today? 8 A. No, I didn't. I did not. 9 Q. Is the Kevin reference to Mr. Murray, your 10 attorney? 11 A. Might -- it might be, yes. 12 Q. Are there any other Kevins -- 13 A. Yeah -- 14 Q. Sorry. 15 A. No, I think it was -- is it related to having some discussions, but Kevin in preparation with Jim, but why am I... 18 Golly, I just wrote this. 19 Q. Other than the people -- 20 A. Old age. 21 Q. Other than -- 22 A. Sorry. 23 Q. That's fine. Other than the people that 24 we've discussed, did you discuss this deposition 25 today with anyone else?</p>

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April 11, 2014

20 (Pages 74 to 77)

<p style="text-align: center;">74</p> <p>1 A. Only telling Jonathan Mayes that I -- I was 2 going to be in San Francisco for the deposition on 3 this case, and that was -- that was it. My 4 administrative assistant that I was going to be 5 involved in a deposition, but she doesn't know what, 6 about what.</p> <p>7 Q. And other than Mr. Mayes and your assistant, 8 did you discuss -- and other than the other folks 9 that we've discussed, have you discussed this 10 deposition today with anyone else?</p> <p>11 A. Cathy East, I said -- indicated to her that 12 I was going to be here today. And -- and that's it.</p> <p>13 Q. Did you discuss the substance of what you 14 expected to testify today with anyone other than 15 your lawyers?</p> <p>16 A. No. Well, let me back up.</p> <p>17 The -- the only thing that Jonathan Mayes 18 knows is that it's the egg antitrust suit, but not 19 specifics, not questions, not -- you know, it was 20 just, it's on this subject.</p> <p>21 (Exhibit 3 was marked for identification 22 and attached hereto.)</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. I am handing you what's been marked as 25 Exhibit 3, Mr. Dowling. Do you recognize this</p>	<p style="text-align: center;">76</p> <p>1 again?</p> <p>2 THE WITNESS: I said Dominic's, you know, a 3 division of Safeway. Vons, a division of Safeway. 4 (Cell phone interruption.)</p> <p>5 THE WITNESS: I'm sorry.</p> <p>6 BY MR. FONTECILLA:</p> <p>7 Q. And when you discussed earlier and testified 8 that the Safeway management team considered 9 positions that Safeway was going to adopt with 10 respect to animal welfare issues for its egg 11 suppliers, would those positions have been the 12 positions of these divisions as well?</p> <p>13 A. Yes.</p> <p>14 (Exhibit 4 was marked for identification 15 and attached hereto.)</p> <p>16 BY MR. FONTECILLA:</p> <p>17 Q. I'm going to hand you what's been marked as 18 Exhibit 4.</p> <p>19 A. Okay.</p> <p>20 Q. This is a highly confidential document Bates 21 stamped SFWEGED00048506.</p> <p>22 Mr. Dowling, do you recognize this document?</p> <p>23 A. I -- I do.</p> <p>24 Q. And how do you recognize it?</p> <p>25 A. Just my name at the top and the -- and the</p>
<p style="text-align: center;">75</p> <p>1 document?</p> <p>2 A. Let me read it here. I'm not --</p> <p>3 MR. MURRAY: Read the whole thing through.</p> <p>4 THE WITNESS: Yeah. Okay. All right.</p> <p>5 I don't recall seeing this. Maybe I'm just 6 not in the...</p> <p>7 BY MR. FONTECILLA:</p> <p>8 Q. The last page of this document, Exhibit 3, 9 it lists certain entities. Do you see that? That 10 last page.</p> <p>11 A. Which -- the last page; right?</p> <p>12 MR. MURRAY: Page 4?</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. Yes, page 4 of 4.</p> <p>15 A. Yes.</p> <p>16 Q. Do you recognize the entities on that page?</p> <p>17 A. I do.</p> <p>18 Q. And how do you recognize the entities on 19 that page?</p> <p>20 A. They're all, I mean, divisions of Safeway or 21 they used to be. Genuardi's is not any more. 22 Lucerne Foods are our dairy manufacturing and -- 23 side of the business. Dominic's are not there any 24 more but a division of Safeway, Vons as well.</p> <p>25 THE REPORTER: I'm sorry, can you say that</p>	<p style="text-align: center;">77</p> <p>1 subject matter and Jim Sheeran and all these, but I, 2 let me -- let me read through the remainder of it 3 here as it relates to -- and animal welfare audits. 4 Obviously, since I typed out an email...</p> <p>5 David Lawrence. Okay.</p> <p>6 MR. MURRAY: Read through the whole thing.</p> <p>7 THE WITNESS: Yeah. Sure. Right.</p> <p>8 MR. MURRAY: You're going to be asked 9 questions on it.</p> <p>10 THE WITNESS: All right. Okay. Yeah, I 11 recognize it is an email from me, but I'm -- I'm not 12 recalling right off the top of my head this, this 13 exchange, but...</p> <p>14 BY MR. FONTECILLA:</p> <p>15 Q. At the top, this is an email from you dated 16 March 29th, 2006; right?</p> <p>17 A. Yes.</p> <p>18 Q. And this email concerns internal Safeway 19 discussions related to its animal welfare company 20 policies; correct?</p> <p>21 A. Right.</p> <p>22 Q. And this email includes a discussion about a 23 Miss Mary Kamm; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Who is Miss Mary Kamm?</p>

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Brian Dowling

April 11, 2014

21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 A. I don't know. I do not -- I honestly do not 2 know.</p> <p>3 Q. And in the email exchange, it references at 4 the bottom of the first page of this Exhibit 4, in 5 the second paragraph that, "The charge that our 6 group is working under now...is to find acceptable 7 national/industry standards (already in existence) 8 and adopt those as Safeway standards."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And after that it says, "(For 12 example...using UEP's guidelines for animal welfare 13 in the shell egg industry) and requiring it of all 14 our suppliers."</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall this discussion?</p> <p>19 A. No, I -- I don't. I'm not recalling it 20 right off. No, I'm not.</p> <p>21 Q. Earlier, we talked, or you testified that 22 the Animal Welfare Committee at Safeway was the 23 group that would be involved in discussing or 24 evaluating potential Safeway positions for animal 25 welfare issues; correct?</p>	<p style="text-align: right;">80</p> <p>1 Lawrence's team in preparation for your deposition 2 today?</p> <p>3 A. I did not.</p> <p>4 Q. And at the top of this document, Mr. Sheeran 5 sends you an email saying, "Did you know that there 6 were others in the company working on company 7 policies for animal welfare?"</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. You said, "I did not. I'll call Mary Kamm."</p> <p>11 A. Right.</p> <p>12 Q. Do you recall calling Miss Kamm?</p> <p>13 A. I don't.</p> <p>14 Q. Do you recall learning of anyone else in 15 Safeway who was developing or considering an animal 16 welfare policy?</p> <p>17 A. No.</p> <p>18 Q. At the bottom of the first page of this 19 exhibit, Miss Kamm in her email states that the 20 group, David Lawrence's group was considering 21 requiring the UEP guidelines of all of egg -- 22 Safeway's egg suppliers in the shell egg industry.</p> <p>23 Do you see that?</p> <p>24 A. I do see that, yeah.</p> <p>25 Q. Yeah. Are you aware of -- of any other</p>
<p style="text-align: right;">79</p> <p>1 A. Right.</p> <p>2 Q. And would -- who else at Safeway would have 3 been involved in discussing these types of animal 4 welfare positions that the company might adopt?</p> <p>5 A. Well, now that I see it, and -- and I see 6 David Lawrence's name and I'd have to even, you 7 know -- David Lawrence and his team on the quality 8 control side of things would -- would have had input 9 on this. And, again, that's where it sort of gets 10 beyond my expertise as a PR guy.</p> <p>11 But now that I'm recalling there, you know, 12 on his side, which is the manufacturing side of the 13 business, the quality control side of the business, 14 David and his team, you know, would have -- would 15 have had input as well. But, you know, but I -- 16 my -- my engagement and involvement, you know, 17 was -- was limited, you know.</p> <p>18 Q. Is it fair to say that David Lawrence and 19 his team would have had knowledge about Safeway's 20 positions or evaluation of the position --</p> <p>21 A. Yes.</p> <p>22 Q. -- that you didn't have?</p> <p>23 A. That's correct. Yes, that -- that would be 24 the case.</p> <p>25 Q. And you didn't meet with anyone from David</p>	<p style="text-align: right;">81</p> <p>1 discussions related to a consideration by Safeway of 2 requiring the UEP guidelines of all of its egg 3 suppliers?</p> <p>4 A. Not to my knowledge, no. It -- no, not to 5 my knowledge.</p> <p>6 (Exhibit 5 was marked for identification 7 and attached hereto.)</p> <p>8 BY MR. FONTECILLA:</p> <p>9 Q. I've handed you what's been marked as 10 Exhibit 5, Mr. Dowling. Please take a minute to 11 review this document. For the record, this is a 12 highly confidential document Bates stamped 13 SFWEGED00001134.</p> <p>14 Do you recognize this document, Mr. Dowling?</p> <p>15 A. I recognize this as being an email from me, 16 yes.</p> <p>17 Q. This is an email from you, at the top dated 18 May 17th, 2008; correct?</p> <p>19 A. Yep.</p> <p>20 Q. And it's to a Mr. -- or Miss Karen Darnell, 21 excuse me.</p> <p>22 A. Yep.</p> <p>23 Q. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know who Miss Darnell is?</p>

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April 11, 2014

22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 A. I do. 2 Q. Who was she? 3 A. She was my administrative assistant. She's since retired. 4 Q. This is an email exchange originally started by a Mr. Peter Larkin. 5 A. Uh-huh. 6 Q. Do you see that? 7 A. Yes. 8 Q. Who is Mr. Larkin? 9 A. He's now -- he's -- he was a private consulting firm, Larkin Public Affairs at the time. He's a -- used to be with Kroger and then he was with -- president of the California Grocers Association. He's now the CEO at the national, a retail -- not the retail federation, but the -- it's the independent, you know, counterpart to FMI in Washington, D.C. 10 Q. NCR? 11 A. No. The National Council -- the restaurants group, no, it's not restaurants. It's -- he's now the CEO of a national retail group in D.C. 12 Q. And do you remember this email exchange? 13 A. I -- I don't. But I'm -- I'm recalling it now, but I -- I barely remember it.</p>	<p style="text-align: right;">84</p> <p>1 Welfare Conference? 2 A. Not to my knowledge. 3 Q. Who is John Larsen? 4 A. He is vice president of a perishable merchandising function at Safeway, and he's got -- has responsibility for egg merchandising. 5 Q. And what would be his roles and responsibilities in that position? 6 A. For? 7 Q. For eggs specifically. 8 A. Eggs, merchandising, you know, pricing of eggs, marketing of eggs, display space given to eggs in stores. 9 Q. Would part of that involve marketing the animal welfare standards or requirements of Safeway's egg suppliers to Safeway's customers? 10 A. Only in that, I think that, you know, we -- we have increased the quantity of cage-free eggs and we periodically will note that perhaps, and I'd have to -- you know, in some merchandising in store materials where we would point that out to customers that we've got an increase or we've got a quantity of cage-free eggs. Because we've seen over time an increase in the interest of customers, primarily based on sales of cage-free eggs, and that's where</p>
<p style="text-align: right;">83</p> <p>1 Q. And what do you recall about this email exchange? 2 A. Let me read it. You know, that Peter is asking, you know, are we going to send somebody to the -- you know, the UEP conference, yeah. 3 Q. Did you attend the UEP conference? 4 A. I did not. 5 Q. Did anyone at Safeway attend this UEP -- 6 A. I don't recall if -- if anybody -- 7 THE REPORTER: Okay. I'm sorry. I need a complete question. 8 MR. FONTICILLA: We'll slow down for her, just wait to answer until I finish my question. 9 THE WITNESS: Okay. Sorry. 10 BY MR. FONTICILLA: 11 Q. Did anyone else from Safeway attend the UEP Animal Welfare Conference that's referenced in this document? 12 A. I don't know. 13 Q. Did Safeway or anyone at Safeway attend any other UEP Animal Welfare Conferences? 14 A. Not that I can recall. Not -- not that I recall. 15 Q. Did Safeway or anyone at Safeway receive any reports about what was discussed at the UEP Animal</p>	<p style="text-align: right;">85</p> <p>1 John's team might have, but I don't know for sure at some point in an ad or at -- at the store level had a sign indicating, you know, cage-free, either on our packaging or on -- at shelf. That could have happened. But I don't know for sure. 2 Q. But the merchandising that John Larsen and his team would do, would also involve caged eggs as well as cage-free; correct? 3 A. Yes. 4 Q. And do you remember how long Mr. Larsen has been in his position? 5 A. I don't know for sure how, but it's been several years. I'm going to say at least five or six years. 6 Q. And you didn't speak with anyone in Mr. Larsen's team or department in preparation for your deposition today -- 7 A. I did not. 8 Q. -- right? 9 (Exhibit 6 was marked for identification and attached hereto.) 10 BY MR. FONTICILLA: 11 Q. I'm handing you what's been marked as Exhibit 6, Mr. Dowling. Please take a minute to review the document.</p>

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April 11, 2014

23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 For the record, this is a highly 2 confidential document Bates stamped SFWEGED00024792.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recognize --</p> <p>5 A. I'm sorry, there's more to it here. Okay.</p> <p>6 Q. This is an email with an attachment.</p> <p>7 A. Yep.</p> <p>8 Q. And this is an email dated June 4th, 2008, 9 sent to you with this attachment; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And who is Miss Vincent?</p> <p>12 A. She -- she works in our HR department, human 13 resources department.</p> <p>14 Q. And do you recognize the attachment that she 15 sent you?</p> <p>16 A. I do. Generally, yes.</p> <p>17 Q. And what is it?</p> <p>18 A. It's a statement of our -- of our, you know, 19 policies on animal welfare, on our Animal Welfare 20 Advisory Council.</p> <p>21 Q. And this would be that policy in or around 22 June of 2008; right?</p> <p>23 A. Yes.</p> <p>24 Q. And you were involved in developing this 25 policy; right?</p>	<p style="text-align: right;">88</p> <p>1 Q. And those are Miss Grandin -- Dr. Grandin, 2 Dr. Shields, and Dr. Swanson; correct?</p> <p>3 A. Right.</p> <p>4 Q. And at the top of the document, the first 5 sentence states, "Since 2001 Safeway has maintained 6 a professional association with a number of 7 well-recognize experts in animal welfare."</p> <p>8 A. Uh-huh.</p> <p>9 Q. Which well-recognized experts in animal 10 welfare has Safeway maintained a professional 11 association with in -- starting in 2001?</p> <p>12 A. Starting in 2001?</p> <p>13 Q. Yes.</p> <p>14 A. Temple Grandin would have been starting in 15 2001. And I think she would have been the only one 16 at -- at that time. You know, I'm not even sure in 17 2001 I had any interaction with Temple Grandin. It 18 would have been more likely in 2002 that we first 19 had made contact with her, maybe even later. But -- 20 but Temple was the first person we turned to on the 21 science side that I did and -- to sort of help us 22 figure some of this stuff out.</p> <p>23 Q. So the reference in that first sentence to 24 Safeway having a professional association with a 25 well-recognized expert in animal welfare would have</p>
<p style="text-align: right;">87</p> <p>1 A. Yes.</p> <p>2 Q. And has this policy changed over time?</p> <p>3 A. If you would just let me read it --</p> <p>4 Q. Sure.</p> <p>5 A. -- again here, just to refresh my memory. I believe it has -- it has changed because the composition of our Animal Welfare Council has changed, some of this content I'd have, again, refresh my memory by looking at our website or whatever other materials that -- some of this probably has changed. I couldn't tell you specifically chapter and verse how it has changed. But, for instance, you know, again the composition of the -- the council has changed.</p> <p>15 Q. And the first page of the attachment here at 16 Bates stamp 24794, has a list of the members of 17 Safeway's Animal Welfare Advisory Council in June of 18 2008; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And it lists you and Miss Littlefield and 21 Mr. Sheeran, who we've discussed; correct?</p> <p>22 A. Yes.</p> <p>23 Q. But then it also lists three individuals who 24 are not Safeway employees; right?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">89</p> <p>1 been a reference to Dr. Grandin; correct?</p> <p>2 A. Yes. Right.</p> <p>3 Q. And when was the next well-recognized expert 4 in animal welfare kind of added to the list of folks 5 who Safeway had a professional association with?</p> <p>6 A. You know, primarily before, I'm going to 7 say, 2005 or 2006, before we had our first meeting, 8 we -- we asked -- it's interesting we're not seeing 9 Joy Mench here on the list. She was -- she was part 10 of our -- but it -- it would have been in that 11 timeframe, 2005, 2006 where we would have approached 12 the others.</p> <p>13 Q. And by "others," you -- who do you mean?</p> <p>14 A. Janice Swanson, Sara Shields, and Joy 15 Mensch, who is not on this for whatever bizarre 16 reason, but...</p> <p>17 Q. And can you describe the professional 18 association that Safeway had with Dr. Grandin 19 starting in 2001?</p> <p>20 A. It was -- at that time, it was consultations 21 primarily by phone; however, Ginni Littlefield, 22 Virginia Littlefield also had -- she was a student 23 of Temple Grandin's as well. It started with Ginni 24 saying, I know her when we were sort of -- I in 25 particular -- was looking for someone to sort of</p>

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Brian Dowling

April 11, 2014

24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 consult. We, as a company, were looking for someone 2 to consult. Ginni indicated that she could make a 3 connection, and my -- my best recollection, it was 4 on that basis that we had our initial conversations 5 with Temple Grandin.</p> <p>6 Q. Do you know when Miss Littlefield started at 7 Safeway?</p> <p>8 A. I don't.</p> <p>9 Q. Miss Littlefield didn't work at Safeway in 10 2001, did she?</p> <p>11 A. She didn't -- I don't know. Maybe.</p> <p>12 Q. In the consultations that Safeway had --</p> <p>13 A. She didn't -- you said she did not work for 14 the company in 2001?</p> <p>15 Q. I'm asking to the best of your recollection.</p> <p>16 A. Well, I think she did.</p> <p>17 Q. In your --</p> <p>18 A. Can I just back up a little bit?</p> <p>19 Q. Sure.</p> <p>20 A. In -- in '01, '02, even '03 -- well, '01, 21 '02, I would have had very little contact with -- 22 with Ginni as it related to some of these issues, 23 that's my best -- I would have had more contact in 24 that timeframe with Jim Sheeran's predecessor on the 25 meat side and others that -- you know, you want me</p>	<p style="text-align: right;">92</p> <p>1 standards that applied to eggs specifically? 2 A. I would -- I -- my recollection was a very 3 broad discussion about the fact that we were being 4 approached by activist groups raising these issues 5 with us and -- and could you give us guidance on 6 some of these issues, and we would have -- she and 7 myself would have fairly broad discussions about 8 these issues.</p> <p>9 As you know, Temple is -- is a unique 10 individual and the conversations were sort of all 11 over the map at the time. And I would find it 12 frustrating at times because, you know, sometimes I 13 always didn't get what I -- I was looking for in the 14 way of clear guidance. But we were -- we were doing 15 our best to figure out the issues and, so any way...</p> <p>16 Q. And what were the issues specifically as to 17 caged egg laying hens and the animal welfare 18 standards that apply to them that you discussed with 19 Miss Grandin in 2002?</p> <p>20 A. I -- I can't recall specifically.</p> <p>21 Q. Do you recall whether you discussed the cage 22 space requirements for caged egg laying hens with 23 Dr. Grandin in 2002?</p> <p>24 A. I -- I probably did, but I can't recall 25 specifically what we would have discussed or the</p>
<p style="text-align: right;">91</p> <p>1 to stay on eggs. Who specifically on eggs I'm 2 struggling to sort of make the connection with 3 specifically who on eggs. 4 Now that you've shown me the piece from 5 David Lawrence, there was some contact with David 6 Lawrence and some of his team on some of the egg 7 issues. That's refreshing my memory.</p> <p>8 Q. So who would have, at Safeway, had the 9 contact and consultations with Dr. Grandin starting 10 in 2001?</p> <p>11 A. It would have been me and/or Ginni.</p> <p>12 Q. And do you recall having consultations with 13 Dr. Grandin starting in 2001?</p> <p>14 A. I -- I generally recall having discussions 15 with, but I think it was more like 2002, I -- rather 16 than 2001. So I -- that's where I, you know, I'm, 17 you know, you're going to say, well, your statement 18 is wrong, but my recollection was that it might have 19 been 2002, so...</p> <p>20 Q. And in 2002 --</p> <p>21 A. I'm trying to be honest here.</p> <p>22 Q. And that's all we want.</p> <p>23 And starting in 2002, can you describe the 24 substance of the consultations that you had with 25 Dr. Grandin as they related to the animal welfare</p>	<p style="text-align: right;">93</p> <p>1 specifics of those conversations.</p> <p>2 Q. What about generally about the caged space 3 requirements for egg laying hens do you -- do you 4 recall Safeway having with Dr. Grandin in 2002?</p> <p>5 A. Only that we had -- only that we were 6 talking to her that there were issues -- this was 7 one of the issues being raised by activists and we 8 were trying to come to grips with it. That was all 9 that we -- we discussed with her.</p> <p>10 Q. And --</p> <p>11 A. And -- and, you know, seeking her input.</p> <p>12 Q. And you were -- Safeway was seeking her 13 input in consideration of a potential position or 14 policy that Safeway would adopt --</p> <p>15 A. Right.</p> <p>16 Q. -- with regards to animal welfare issues; 17 correct?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. And in those discussions with Dr. Grandin, 20 did Safeway discuss with Dr. Grandin the UEP 21 guidelines in 2002?</p> <p>22 A. Not that I recall.</p> <p>23 Q. And --</p> <p>24 A. Now -- now, I -- Ginni might have, I 25 don't -- but I don't recall having those discussions</p>

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Brian Dowling

April 11, 2014

25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 specifically with Temple Grandin on UEP guidelines. 2 Q. And what about with anyone else that is 3 referenced here as a well-recognized expert in 4 animal welfare, do you recall having discussions 5 with other animal welfare experts starting in 2001 6 with regards to the UEP guidelines?</p> <p>7 A. Again, Joy Mench we would have had it, but 8 not -- not -- I -- not in 2001. That would have 9 been early. It would have been more like 2002, 10 where we initiated some discussions with Joy Mench, 11 I think, I think, I'd need to -- but -- but she 12 didn't join the committee until much later, so 13 anyway.</p> <p>14 Q. I just want to -- just so we're clear, 15 earlier I had asked when was the next time that 16 Safeway talked to an animal welfare expert after 17 consulting Dr. Grandin in 2001 and 2002, and you 18 mentioned Joy Mench in 2005. And now you -- are you 19 clarifying --</p> <p>20 A. Yeah, I --</p> <p>21 Q. -- that Safeway talked to Dr. Mench --</p> <p>22 A. We -- we might have.</p> <p>23 THE REPORTER: Okay.</p> <p>24 MR. MURRAY: Yeah, just you've got to slow 25 down a little.</p>	<p style="text-align: right;">96</p> <p>1 BY MR. FONTECILLA: 2 Q. -- or in the second page of this attachment, 3 Mr. Dowling, there is a -- a section titled "Scope." 4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And it says, "All Safeway meat, pork, 7 poultry, egg, dairy and seafood suppliers are 8 required to meet a set of designated animal 9 treatment guidelines."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Specifically with regards to egg and the 13 time period that this document existed in 2008, what 14 were the animal treatment guidelines that Safeway 15 required its suppliers to meet?</p> <p>16 A. As it relates to eggs?</p> <p>17 Q. Yes.</p> <p>18 A. I couldn't tell you right off the top of my 19 head. I'd need, I would need to look at another 20 document. I -- again, I'm -- I'm -- again, I'm not 21 the expert on -- on that, and so I -- I couldn't 22 specifically tell you.</p> <p>23 Q. So you --</p> <p>24 A. But I could tell you broadly that they 25 related to issues of cage space, forced molting,</p>
<p style="text-align: right;">95</p> <p>1 THE WITNESS: Sorry. Sorry. 2 MR. MURRAY: Let him finish and then pause. 3 THE WITNESS: My apologies.</p> <p>4 BY MR. FONTECILLA: 5 Q. Did Safeway discuss or consult with 6 Dr. Mench in 2002, regarding the animal welfare 7 standards that applied to egg suppliers?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. So other than Dr. Grandin and your 10 consultations with her in or around 2002, who -- 11 what other animal welfare experts did Safeway have a 12 professional association with between 2001 and 2005? 13 A. It would have been Temple Grandin, 14 principally.</p> <p>15 Q. And other than your testimony so far, do you 16 recall any other discussions with Dr. Grandin by 17 Safeway regarding the animal welfare issues as they 18 applied to egg suppliers?</p> <p>19 A. No.</p> <p>20 MR. MURRAY: Are you moving to a new 21 document?</p> <p>22 BY MR. FONTECILLA: 23 Q. In the second page of this exhibit -- 24 MR. MURRAY: I guess that answers that. 25 ///</p>	<p style="text-align: right;">97</p> <p>1 debeaking. Those -- those were issues that were 2 getting raised at that point and we were -- they 3 were dealing with as it related to. 4 But, again, this is -- this is where my 5 knowledge starts to fall off rather rapidly as it 6 relates to -- to eggs in -- in some of this 7 activity. So that's where I'm at a disadvantage. 8 Q. Are you prepared to testify on behalf of the 9 company today about the animal treatment guidelines 10 or standards that Safeway requires of its egg 11 suppliers?</p> <p>12 MR. MURRAY: It's not a designated topic. 13 You can answer.</p> <p>14 THE WITNESS: I -- I'm really not.</p> <p>15 BY MR. FONTECILLA: 16 Q. And did you have any involvement in 17 publicizing or approving the animal welfare 18 standards that Safeway adopted with regards to its 19 egg suppliers between 2001 and 2006? 20 MR. MURRAY: Objection. Compound. 21 You can answer. It's a compound question. 22 He wants to let it stand, you can answer it. 23 THE WITNESS: Could you ask it again, 24 please? 25 ///</p>

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April 11, 2014

26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Sure. Did you have any involvement in 3 publicizing or approving animal welfare standards 4 that Safeway adopted with regards to its egg 5 suppliers between 2001 and 2006?</p> <p>6 MR. MURRAY: Same objection.</p> <p>7 THE WITNESS: Not that I recall. I mean -- 8 well, you -- let me just back up. We -- we -- it 9 was in the publicizing and talking publicly as it 10 related -- it relates to animal welfare guidelines 11 on -- on eggs and other parts of that, I would 12 have -- I would have talked to the media, responded 13 to inquiries in '02, the Shameway campaign was an 14 element obviously tied in with eggs. So as it 15 relates to sort of publicizing and communicating, I 16 would have been involved in that part of it.</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. And part of that involvement would have been 19 an understanding of what Safeway's policies were 20 with regards to its egg suppliers and animal welfare 21 issues; right?</p> <p>22 A. A general understanding, yes.</p> <p>23 Q. And did you have an understanding of 24 Safeway's animal welfare policies as it applies to 25 egg suppliers starting in 2001?</p>	<p style="text-align: right;">100</p> <p>1 No. 1 in the deposition of Brian Dowling. 2 (Off the record.)</p> <p>3 THE VIDEOGRAPHER: We're back on the record.</p> <p>4 The time is 11:06 a.m. This marks the beginning of 5 Disk No. 2 in the deposition of Brian Dowling.</p> <p>6 BY MR. FONTECILLA:</p> <p>7 Q. Mr. Dowling, did you discuss your deposition 8 testimony with your counsel on the break?</p> <p>9 MR. MURRAY: Don't answer the question.</p> <p>10 BY MR. FONTECILLA:</p> <p>11 Q. Mr. Dowling, did your counsel instruct you 12 on how to testify during the break?</p> <p>13 A. No comment.</p> <p>14 Q. Did he instruct you on how to testify, how 15 to change your testimony during the break?</p> <p>16 A. It was just -- just asked -- suggested by my 17 counsel not to answer the question.</p> <p>18 MR. MURRAY: You're not -- you're not going 19 to talk to him about what we discussed.</p> <p>20 BY MR. FONTECILLA:</p> <p>21 Q. I'm not asking you what you discussed. I'm 22 just asking the question, did he instruct you?</p> <p>23 A. He did not.</p> <p>24 MR. MURRAY: You can answer "yes" or "no" 25 and that's it.</p>
<p style="text-align: right;">99</p> <p>1 A. A limited understanding.</p> <p>2 Q. And what is that understanding as it was in 3 2001?</p> <p>4 A. Again, if I had -- I would need a document 5 in front of me to sort of clarify that. But, again, 6 it was a -- that we were going to be, you know, 7 asking our suppliers to follow humane guidelines as 8 it related to, you know, the -- the egg production 9 business and that was -- that was -- that was 10 largely it.</p> <p>11 Q. Was Safeway's policy in 2001 to purchase 12 eggs from egg suppliers that were not complying with 13 the UEP guidelines?</p> <p>14 A. Ask the question again, please.</p> <p>15 Q. Sure. Was Safeway's policy in 2001 to 16 purchase eggs from egg suppliers that were not 17 complying with the UEP guidelines?</p> <p>18 MR. MURRAY: Object to the form of the 19 question. It's misleading. And vague.</p> <p>20 THE WITNESS: You know, I -- I can't -- I 21 don't know. I don't know. I'm not...</p> <p>22 MR. MURRAY: We'll take a break now. We've 23 been going for over an hour and a half.</p> <p>24 THE VIDEOGRAPHER: Going off the record.</p> <p>25 The time is 10:53 a.m. This marks the end of Disk</p>	<p style="text-align: right;">101</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Let me just finish the question. Did he 3 instruct you on how to testify during the break?</p> <p>4 MR. MURRAY: It's a yes-or-no question.</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. You're under oath.</p> <p>7 MR. MURRAY: It's a yes-or-no question.</p> <p>8 THE WITNESS: Then -- then I'm going to 9 answer yes.</p> <p>10 BY MR. FONTECILLA:</p> <p>11 Q. And what did he instruct you to testify, 12 Mr. Dowling?</p> <p>13 MR. MURRAY: Do not reveal any substantive 14 communications.</p> <p>15 MR. FONTECILLA: Counsel will reserve the 16 rights.</p> <p>17 (Exhibit 7 was marked for identification 18 and attached hereto.)</p> <p>19 BY MR. FONTECILLA:</p> <p>20 Q. I'm handing you what's been marked as 21 Exhibit 7, Mr. Dowling. Please take a minute to 22 review it. For the record, this is a highly 23 confidential document Bates stamped SFWEGED00024001.</p> <p>24 Do you recognize this document, Mr. Dowling?</p> <p>25 A. I recognize it as an email exchange.</p>

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Brian Dowling

April 11, 2014

27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 Q. This is an email exchange you had with a 2 Mr. Weiffenbach on March -- in or around March of 3 2006; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Mr. Weiffenbach is an employee of Burger 6 King; is that correct?</p> <p>7 A. It appears from the email address, 8 "whopper," yes.</p> <p>9 Q. And as part of your job as vice president of 10 public affairs at Safeway, you have interactions 11 with individuals at Burger King?</p> <p>12 A. I have had, yes.</p> <p>13 Q. And have you discussed animal welfare 14 practices as they apply to egg suppliers with Burger 15 King?</p> <p>16 A. Not that I can specifically recall. But I 17 think we probably did. I just can't recall specific 18 conversations with Steve or this -- this 19 Mr. Weiffenbach.</p> <p>20 Q. In the first email of this email chain, 21 which is actually on page 2 of 3 --</p> <p>22 A. Right.</p> <p>23 Q. -- above all the disclosures.</p> <p>24 A. Yep.</p> <p>25 Q. It's an email from you to Mr. Weiffenbach --</p>	<p style="text-align: right;">104</p> <p>1 Safeway's Animal Welfare Council including experts 2 about the animal welfare practices as they applied 3 to egg suppliers?</p> <p>4 A. I -- I don't recall specifically, but it -- 5 it may have come up. I think -- my recollection of 6 this in -- in conversation related to sort of the 7 functioning of the council as I recall and -- and, 8 you know, the composition of their council, 9 vis-a-vis, what we were trying to -- to do.</p> <p>10 Q. And in considering the formation of its 11 Animal Welfare Council in or around 2006, did 12 Safeway seek input from any other entities other 13 than Burger King?</p> <p>14 A. I talked to someone at McDonalds as well.</p> <p>15 Q. And other than McDonalds and Burger King, 16 were there any other entities whose input Safeway 17 solicited or received in connection with its 18 formation of the Animal Welfare Council around 2006?</p> <p>19 A. Not that I recall. I think it was those 20 two.</p> <p>21 Q. Did Safeway seek any input from animal 22 welfare organizations like PETA?</p> <p>23 A. We did.</p> <p>24 Q. And so in addition to PETA, Burger King, and 25 McDonalds, are there any other entities that Safeway</p>
<p style="text-align: right;">103</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- asking for input on the formation of 3 Safeway's Animal Welfare Council; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall seeking the input of fast-food 6 restaurants and their employees in considering 7 forming Safeway's Animal Welfare Council?</p> <p>8 A. I -- I do recall.</p> <p>9 Q. And what do you recall about that?</p> <p>10 A. Asking generally for their advice on -- on 11 what their councils, who -- who was on their 12 councils and -- and sort of how they functioned and 13 how they advised their companies.</p> <p>14 Q. And why were you seeking the input of folks 15 like Mr. Weiffenbach at Burger King?</p> <p>16 A. Because they had more experience than we did 17 in -- in dealing with these issues.</p> <p>18 Q. And -- and why was that important to Safeway 19 in forming its Animal Welfare Council?</p> <p>20 A. Well, again, we were looking to sort of 21 establish some sort of best practice and -- and we 22 were looking to some of these folks because they had 23 more experience than we did and we were -- and 24 that's why.</p> <p>25 Q. Was part of the consideration in forming</p>	<p style="text-align: right;">105</p> <p>1 solicited input from in its formation of its Animal 2 Welfare Council in around 2006?</p> <p>3 A. Those are the -- those are primarily who 4 we -- we talked to, as I recall.</p> <p>5 Q. And I mean, I understand that those are the 6 primary three entities.</p> <p>7 A. Yeah.</p> <p>8 Q. Are there any other entities?</p> <p>9 A. Not that I recall.</p> <p>10 Q. And do you recall any input from any of 11 those three entities in or around that time period 12 that related to the animal welfare practices of egg 13 suppliers?</p> <p>14 A. I don't recall.</p> <p>15 Q. And why was Safeway soliciting the input of 16 entities like PETA?</p> <p>17 A. You know, they -- they were -- they were, 18 you know, sort of on us, you know, on the issue, 19 they -- and, you know, as a company, we made a 20 decision, it's a -- that -- you know, that we were 21 going to engage with PETA. We were going to open a 22 line of communication, open a line of dialogue with 23 them, and it's -- it's not -- and that's not unique 24 to PETA, it's -- it's the way we've chosen to do 25 things as a company with a range of other</p>

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Brian Dowling

April 11, 2014

28 (Pages 106 to 109)

<p style="text-align: right;">106</p> <p>1 organizations. 2 And in this case, you know, we, you know, 3 chose because, you know, PETA, to their credit, I 4 mean, they initially had a guy named Bruce 5 Friedrich, who was -- was sort of interacting with 6 us, and Mr. Friedrich was difficult, to say the 7 least, and, you know, they -- you know, they 8 subsequent to that, you know, contact -- we were 9 contacted by a guy named Steve Gross, who I'm sure 10 you know. You know, he -- he was, you know, he was 11 an easier guy to communicate with, and, you know, 12 and -- and so we opened a dialogue with him, and 13 they -- they had their ideas on -- on things like an 14 Animal Welfare Council and animal welfare generally, 15 and we made a decision that we were going to engage 16 with them.</p> <p>17 Q. And was Safeway's formation of an Animal 18 Welfare Council -- or excuse me.</p> <p>19 Was Safeway's decision to form an Animal 20 Welfare Council driven in part by the request of 21 PETA and organizations like PETA?</p> <p>22 A. It was -- no. It was -- we -- we took their 23 input, and -- but it was our decision alone to form 24 the -- the council on our own.</p> <p>25 Q. And what was the mandate of the council when</p>	<p style="text-align: right;">108</p> <p>1 Q. So PETA suggested to Safeway that an Animal 2 Welfare Council should include as part of its 3 mandate consideration of animal welfare issues as 4 they applied to egg suppliers; correct?</p> <p>5 A. Yeah. Again, it would have -- it would 6 have -- yeah, they -- they would have touched on 7 that issue. That -- I mean, the -- the big issue 8 for PETA was controlled atmosphere stunning, they 9 were less interested in the -- on the egg side, as I 10 recall.</p> <p>11 Q. And this is in 2006; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And that's because PETA and Safeway had 14 already coordinated on animal welfare standards as 15 they applied to egg suppliers back in 2001 or 2002; 16 correct?</p> <p>17 A. Yeah. We'd interaction on -- on these 18 issues back then.</p> <p>19 Q. Do you know who a Mr. Gene Gregory is?</p> <p>20 A. My -- UEP is -- is my recollection of who he 21 is, that he was, I think, the CEO there. He may 22 still be.</p> <p>23 Q. Did you ever have any interactions with 24 Mr. Gregory?</p> <p>25 A. I have had an interaction. I've talked to</p>
<p style="text-align: right;">107</p> <p>1 it was formed?</p> <p>2 A. To provide input and guidance to Safeway 3 on -- on animal welfare generally.</p> <p>4 Q. And that included animal welfare issues that 5 applied to egg suppliers?</p> <p>6 A. It did.</p> <p>7 Q. And that included animal welfare issues that 8 applied to egg suppliers who used -- who used 9 battery cages; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And specifically, with regard to those 12 animal welfare issues as they applied to egg 13 suppliers who used caged egg laying hens, did 14 Safeway receive or solicit any input from McDonalds, 15 Burger King, or PETA about including those issues in 16 the mandate of the council?</p> <p>17 A. Not from Burger King, as I recall, not from 18 neither of the fast-food chains. PETA may have 19 provided some input.</p> <p>20 Q. And why do you say that?</p> <p>21 A. But I'd have to look back through. They -- 22 they, either PETA or HSUS, or one of the two, would 23 have provided some input on some of that or at least 24 formed an -- or provided an opinion on some of that, 25 that we would have, but...</p>	<p style="text-align: right;">109</p> <p>1 Gene Gregory probably once.</p> <p>2 Q. When was that?</p> <p>3 A. In or around probably 2008, when -- I -- my 4 recollection was 2008, in or around when we 5 published our, you know, and I think Gene called me.</p> <p>6 Q. When you published your -- your what?</p> <p>7 A. Our -- our statements as it related to 8 gestation stalls, CAK, and -- and eggs.</p> <p>9 Q. And what did the statement have to do with 10 UEP?</p> <p>11 A. What did it have to do with UEP?</p> <p>12 Q. Yeah. How did it relate to UEP?</p> <p>13 A. Well, we were talking about, you know, 14 humane guidelines for -- for egg laying hens, and 15 our interest in -- in purchasing more cage-free 16 eggs, and that's, you know, that was -- that was the 17 connection to -- to UEP.</p> <p>18 Q. Do you -- when was the first time, if you 19 know, that Safeway had any interactions with UEP?</p> <p>20 A. I -- I couldn't tell you for sure. I 21 couldn't -- as to when Safeway first had 22 interactions with UEP? I would not be able to tell 23 you specifically when.</p> <p>24 Q. When is the first time, that you're aware, 25 that Safeway had any interactions with UEP?</p>

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Brian Dowling

April 11, 2014

29 (Pages 110 to 113)

<p style="text-align: right;">110</p> <p>1 A. Probably in the 2001 range. 2 Q. And what is the basis for your testimony as 3 to the 2001 range? 4 A. I'm just, I'm recalling from my review of -- 5 of my material and my recollection that it would 6 have been in that timeframe when -- when I became 7 aware, that when I even became aware of UEP. 8 Again, I just, you know -- again, my -- my 9 role as -- as the PR guy interacting with these 10 outside groups, you know -- you know, I had limited 11 knowledge of -- of what we were doing with eggs and 12 UEP and what it was. But it was in or around -- 13 again, 2000, 2001, it was there that I became aware 14 of UEP and even what they did, so... 15 Q. And how did -- how did you first become 16 aware of UEP and what they did? 17 A. You know, it might have been through some 18 interaction that I had with FMI where they were -- 19 would have gathered information on egg laying issues 20 and caged -- and eggs as it relates to UEP when they 21 were formulating and putting together and providing 22 input to the industry on -- on animal welfare. I 23 think that's where I first became aware of it. 24 Q. And what specifically did you become aware 25 of in or around that time about UEP?</p>	<p style="text-align: right;">112</p> <p>1 which has been marked as Exhibit 8. 2 Do you recognize this document? 3 A. I don't. 4 Q. Do you recall, or do you recognize any of 5 the names listed at the top of the memorandum? 6 A. Gene Gregory, yes, I do recognize his name. 7 Q. And do you know who is Miss Allie Steck is? 8 A. I do not. 9 Q. And this is a memorandum authored by Allie 10 Steck in which in the first paragraph she says, "We 11 have been in touch with Brian Dowling." 12 Do you see that? 13 A. Yes. 14 Q. Do you know what that's referring to? 15 A. You know, I really don't. I mean, I'm not 16 recalling. 17 Q. And do you see in the next sentence it 18 says -- it represents that you made a statement that 19 Safeway stores will only carry eggs from certified 20 farms. 21 Do you see that? 22 A. I see that. 23 Q. Do you recall making a statement to that 24 effect? 25 A. I -- I might have, but I -- I'm not -- not</p>
<p style="text-align: right;">111</p> <p>1 A. Just who they were and -- and generally what 2 they did. 3 (Exhibit 8 was marked for identification 4 and attached hereto.) 5 BY MR. FONTICILLA: 6 Q. I'm handing you what's been marked as 7 Exhibit 8. 8 Have you ever seen this document before, 9 Mr. Dowling? 10 A. I -- I have not. Let me -- let me just 11 finish reading it. 12 MR. MURRAY: Do you have a copy of the 13 protective order? 14 MR. FONTICILLA: Can we go off the record 15 for just one second, please. 16 Can you turn that copy over real quick, 17 Mr. Dowling? 18 THE VIDEOGRAPHER: We're going off the 19 record. The time is 11:19 a.m. 20 (Off the record.) 21 THE VIDEOGRAPHER: We're back on the record. 22 The time is 11:23 a.m. 23 BY MR. FONTICILLA: 24 Q. Mr. Dowling, you have what's in front of you 25 a confidential document Bates stamped UE0156322</p>	<p style="text-align: right;">113</p> <p>1 specifically recalling that. 2 Q. And why do you say you might have? 3 A. Well, I just -- I -- you know, I'm -- and, 4 again, we're going back here, you know, more than, 5 you know, 10 plus years, 12 years, and -- and just 6 in a conversation I would have had with somebody 7 at -- in -- you know, on this, I just don't recall. 8 But it -- I -- I could have, you know. 9 Again, the -- the challenge for -- for me in 10 a lot of this, even in the preparation, is that, you 11 know, as, you know, we're a 30-plus billion dollar 12 company with a lot of stores and a lot of employees 13 and a lot of communities, and I'm dealing -- we've 14 got a real -- a small staff. You know, you look at 15 some companies, and they've got large public affairs 16 staffs. We've got a small group of us, and -- and, 17 you know, sort of I say "group," you know, I'm -- 18 I'm it on contacts with sort of the outside world. 19 And during the course of any one month, any 20 one week, but during the course of a year over a 21 12-year period, you know, dealing -- this is one 22 issue out of hundreds and that's -- and it's hard to 23 recall some of this. That's -- so I'm not using 24 that as an excuse, but it's -- it is what it is. 25 Q. And I can completely appreciate that given</p>

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Brian Dowling

April 11, 2014

30 (Pages 114 to 117)

<p style="text-align: right;">114</p> <p>1 the timeframe of -- of some of this. 2 A. Yeah. 3 Q. And we only ask -- I can only ask to the 4 best of your recollection -- 5 A. Sure. Right. 6 (Exhibit 9 was marked for identification 7 and attached hereto.) 8 BY MR. FONTECILLA: 9 Q. I'm handing you what's been marked as 10 Exhibit 9. For the record, this a confidential 11 document Bates stamped FMI-001209. 12 Do you recognize this document, Mr. Dowling? 13 A. I don't, but if you let me read through it 14 I'll... 15 Q. Please, take your time. 16 A. I guess this is from Karen attending... 17 Karen's meeting notes. Okay. I'm sorry. 18 Okay. Yes. 19 Q. Have you ever seen this document before? 20 A. I have -- I don't recall seeing it. I -- I 21 might have seen it in the past, but I'm not 22 immediately recall seeing it -- I do remember FMI 23 counseling sort of the industry that -- that -- that 24 individual companies ought not to engage with PETA. 25 I mean, let us handle that. So I do -- that -- that</p>	<p style="text-align: right;">116</p> <p>1 member of FMI's board of directors? 2 A. Yes. 3 Q. And starting when? 4 A. Well -- 5 Q. Since 1999. 6 A. Since 1999. Sorry. Yes, our CEO has served 7 on the board of directors. 8 Q. And -- 9 A. Our -- our most -- our CEO just retired 10 about a year ago. 11 Q. And who is that? 12 A. Steve Burd. 13 Q. And when was Steve Burd a member of FMI's 14 board of directors starting in 1999? 15 A. I'd -- I'd have to check the records, but 16 I -- I can't recall exactly when his term started 17 and ended, but he probably would have been on the 18 board of directors in or around that time for a 19 lengthy period of time, but, again, it just... 20 Q. Since '99, has there ever been a period of 21 time where Safeway has not been represented on FMI's 22 board of directors? 23 A. I -- I don't -- I believe there was a period 24 of time where -- there was a short period of time 25 somewhere in there where we didn't have, where Steve</p>
<p style="text-align: right;">115</p> <p>1 initial, you know, Karen Brown, because I -- you 2 know, I -- that part of it, I recall. And so I'm 3 generally familiar with sort of the issue that they 4 were raising and what they were getting at here. 5 Q. Okay. And what is FMI? 6 A. Food Marketing Institute. 7 Q. And what do they do? 8 A. They're a trade association representing the 9 retail grocery industry in Washington, D.C. 10 Q. And what is Safeway's involvement with FMI? 11 A. We're members, have been for many years. 12 Q. When did -- when did Safeway become a member 13 of FMI? 14 A. In its formation probably dating back to the 15 mid 1970s, early 1970s, as I recall. I don't -- I 16 don't know. I mean, I -- when I joined the company 17 in 1979, I -- I can't even recall at that point 18 whether or not we were -- but we would have been. 19 It might have been called something slightly 20 differently, but it would date back into the early 21 1970s. 22 Q. And since 1999, has Safeway been a member of 23 FMI? 24 A. Yes. 25 Q. And has Safeway, since 1999, ever been a</p>	<p style="text-align: right;">117</p> <p>1 was not on the board of directors, but I'd -- I'd 2 have to check the records. 3 Q. And about when was that? 4 A. When he was on the board of directors? 5 Q. That period of time -- 6 A. When he was not? Probably in the -- 7 probably in the 1999, early 2000s, he -- he may not 8 have been on the board. I just don't know. I -- 9 but I -- I just can't recall. 10 Q. And as a member of FMI's board of directors, 11 what are Safeway's roles and responsibilities? 12 A. Again, I -- I don't engage with FMI at that 13 level, so I couldn't specifically layout for you the 14 roles specifically of the members of the board of 15 directors. 16 Q. Did you do anything to prepare for your 17 deposition today to get an understanding of what 18 Safeway's involvement on FMI's board of directors 19 is? 20 A. I did not. 21 Q. Did you do anything to prepare for your 22 deposition today to get an understanding of what 23 Safeway's role as a member of FMI is? 24 A. I did. 25 Q. And what did you do?</p>

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Brian Dowling

April 11, 2014

31 (Pages 118 to 121)

<p style="text-align: right;">118</p> <p>1 A. I looked back through my notes and my 2 records as it related to my interaction with FMI on 3 animal welfare issues generally.</p> <p>4 Q. And would there have been any other 5 involvement by Safeway on FMI other than yours?</p> <p>6 A. Yes.</p> <p>7 Q. And what would that be?</p> <p>8 A. We would have various members of our 9 management team on various committees, legal affairs 10 committee, loss prevention committee, government 11 relations committee, we would have designated people 12 who would serve on those committees of FMI.</p> <p>13 Q. And would some of those committees at FMI 14 have considered or discussed animal welfare issues?</p> <p>15 A. I believe the board of directors. It was 16 raised in front of the board of directors. But the 17 committees, those committees I mentioned 18 specifically, the ones that I mentioned, no. I'd 19 have to look at sort of the roster of FMI committees 20 to sort of see, you know -- it -- it probably came 21 up at one of the committees.</p> <p>22 Q. What committee would that have been?</p> <p>23 A. I'd -- I'd have to look at the roster of the 24 FMI committees, because there's not -- there's not a 25 specific animal welfare committee.</p>	<p style="text-align: right;">120</p> <p>1 Government relations was off on other 2 things, different things as was lost prevention and 3 those kinds of things. Legal affairs, those are the 4 ones that I'm sort of specifically recalling where I 5 know that we have people serving on those 6 committees.</p> <p>7 BY MR. FONTICILLA:</p> <p>8 Q. What other Safeway representatives were 9 involved with FMI's discussions of animal welfare 10 issues?</p> <p>11 A. Well, I can see here in 2000, Jonathan Mayes 12 obviously had some communication with them in his 13 capacity.</p> <p>14 Q. And were you working with Mr. Mayes at the 15 time of this document, Exhibit 9?</p> <p>16 A. I -- I was.</p> <p>17 Q. And in what capacity were you working with 18 Mr. Mayes as it related to Safeway's involvement at 19 FMI?</p> <p>20 A. At this time, Jonathan actually reported to 21 me.</p> <p>22 Q. And would Jonathan have reported on his 23 involvement at FMI meetings?</p> <p>24 A. He would have, yes.</p> <p>25 Q. And do you recall him reporting to you this</p>
<p style="text-align: right;">119</p> <p>1 Q. Are there any -- what other committees, 2 other than the ones that you've listed, are FMI 3 committees that deal with animal welfare issues?</p> <p>4 A. I'd have to -- I'd have to check my -- 5 there's a -- there may be a -- there's a -- there's 6 a food, I would say, technology. That's the wrong. 7 I'd have to look at the roster of committees and I 8 could probably better identify it if I had it in 9 front of me.</p> <p>10 Q. Do you have a list of the roster with you?</p> <p>11 A. I don't.</p> <p>12 Q. What has been Safeway's involvement with the 13 committees that might have discussed animal welfare 14 issues since 1999?</p> <p>15 MR. MURRAY: Objection. Calls for 16 speculation.</p> <p>17 THE WITNESS: Yeah. I -- I mean, I don't --</p> <p>18 MR. MURRAY: It's overly broad.</p> <p>19 THE WITNESS: Yeah. Again, my interaction 20 with FMI, committees, I think, have had limited --</p> <p>21 the committees that I mentioned where I know where 22 I've got -- where we've got people serving on 23 government relations and other committees, my 24 recollection is that there was, you know, not a lot 25 of discussion about animal welfare issues.</p>	<p style="text-align: right;">121</p> <p>1 meeting in November 29, 2000?</p> <p>2 A. I'm not immediately recalling it.</p> <p>3 Q. And you see it in this first page of 4 Exhibit 9, it references that their hope is that no 5 individual company will deal with PETA, but instead, 6 all the companies will work with FMI to develop an 7 industry position --</p> <p>8 A. Right.</p> <p>9 Q. -- that they can adopt.</p> <p>10 Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. Does that refresh your recollection about 13 what Mr. Mayes, if any -- if anything, reported to 14 you about FMI's discussions?</p> <p>15 A. It -- it does. I mean, he and I could have 16 had a conversation about this where we would have, 17 you know, had, you know, said, hey, you know, that 18 Karen and FMI are suggesting we not have any contact 19 with PETA, you know.</p> <p>20 Q. And was it your understanding that FMI and 21 its members were working together around this time 22 period to develop an industrywide position as it 23 related to animal welfare issues?</p> <p>24 A. Can you repeat the question? I'm sorry.</p> <p>25 Q. Sure. Was Safeway and the other FMI members</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

32 (Pages 122 to 125)

122	124
<p>1 around 2000, working to develop an industrywide 2 position regarding animal welfare issues?</p> <p>3 A. They may have been. They -- they clearly 4 were in some form here, but not that I was directly 5 involved in.</p> <p>6 Q. But they were?</p> <p>7 A. I believe they were, yes. Karen Brown and 8 team were involved in this.</p> <p>9 Q. And part of those animal welfare issues 10 would include the standards that applied to egg 11 suppliers; right?</p> <p>12 A. Yes.</p> <p>13 Q. And FMI, as part of this discussion, 14 considered certain benefits of the approach of 15 having an industrywide standard as opposed to each 16 individual member coming up with its own standard; 17 right?</p> <p>18 A. Right.</p> <p>19 MR. MURRAY: Objection to the form of the 20 question.</p> <p>21 BY MR. FONTICILLA:</p> <p>22 Q. And what were some of the benefits that 23 Safeway considered about participating in an 24 industrywide standard rather than developing its own 25 individual standard?</p>	<p>1 standards ready by mid-February."</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And do you recall FMI endeavoring to have 5 industrywide standards ready by February of 2001?</p> <p>6 A. I -- I generally do.</p> <p>7 Q. And did Safeway participate in FMI's efforts 8 to adopt industrywide standards in late 2000 and 9 early 2001?</p> <p>10 A. We may have, but I was not involved.</p> <p>11 Q. Who was involved?</p> <p>12 A. I -- you know, in looking at some of the 13 documents that you've showed me as it relates to 14 eggs in particular, some of our QA, or quality 15 assurance people may have been involved on the egg 16 side of things, and -- but that is -- that is -- but 17 I don't know that for sure.</p> <p>18 Q. And this document reflects that Mr. Mayes, 19 who reported to you at the time, in late 2000, was 20 also involved; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And did you speak with Mr. Mayes in 23 preparation for your deposition today?</p> <p>24 A. As I indicated earlier, I spoke with 25 Jonathan briefly about coming over here.</p>
123	125
<p>1 A. Well, I think we -- we saw benefit that we 2 were not going to, you know, duplicate effort. That 3 we would -- you know, as we do with -- with other 4 issues on, you know, looking at industry best 5 practices rather than, you know, wandering off, you 6 know, completely on in some of these. We saw 7 benefit in having, you know, FMI take a leadership 8 role and guide the -- you know, guide the industry 9 on this.</p> <p>10 Q. And in the -- kind of halfway down of this 11 first page of Exhibit 9, it says that "The benefits 12 of this approach are many and include the 13 following," and then it has three bullet points.</p> <p>14 A. Right.</p> <p>15 Q. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Reading over those bullet points, did 18 Safeway consider any of those to be benefits to an 19 industrywide approach?</p> <p>20 A. Sure. We did consider it as a benefit.</p> <p>21 Sure. We did.</p> <p>22 Q. For each of those; correct?</p> <p>23 A. Yes. I mean -- yes.</p> <p>24 Q. And the next sentence says, "All these steps 25 must be done quickly. Our goal is to have industry</p>	<p>1 Q. And did you discuss with him his 2 participation at this meeting?</p> <p>3 A. I did not.</p> <p>4 Q. Did you discuss with him his participation 5 at any other FMI meetings?</p> <p>6 A. No, I did not.</p> <p>7 Q. And on the second page of this Exhibit 9, it 8 says, "Based on our meeting, FMI will do the 9 following," and it lists six topics.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And looking at researching current industry 13 standards and standards the industry is proposing to 14 implement under No. 1.</p> <p>15 A. Yeah.</p> <p>16 Q. Do you recall whether Safeway had -- did 17 Safeway have any involvement in researching current 18 industry standards and standards the industry was 19 proposing to implement in late 2000 and early 2001?</p> <p>20 A. I -- I don't recall specifically.</p> <p>21 Q. Do you know -- well, strike that.</p> <p>22 Did Safeway research the so-called McDonalds 23 standards as it's listed in the second point of what 24 FMI would do to develop an industrywide standard?</p> <p>25 A. No, I -- I did not.</p>

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Brian Dowling

April 11, 2014

33 (Pages 126 to 129)

<p style="text-align: right;">126</p> <p>1 Q. Did Safeway?</p> <p>2 A. No, not that I'm aware of.</p> <p>3 Q. Did Safeway research organizations and</p> <p>4 university experts that FMI could partner with, as</p> <p>5 it's listed in No. 3, in connection with FMI's</p> <p>6 efforts to develop an industrywide standard in late</p> <p>7 2000, early 2001?</p> <p>8 A. Did -- did we? Not that I -- not that I</p> <p>9 know of.</p> <p>10 Q. And did -- did Safeway participate in any</p> <p>11 joint conference calls with McDonalds to understand</p> <p>12 their experience as it related to animal welfare</p> <p>13 issues as part of FMI's efforts to develop an animal</p> <p>14 welfare industrywide policy in late 2000?</p> <p>15 A. Not that I recall. Not -- not that I was</p> <p>16 involved with.</p> <p>17 Q. And looking at numbers 5 and 6, are you</p> <p>18 aware -- or did Safeway participate in FMI's efforts</p> <p>19 to develop an industrywide standard and the specific</p> <p>20 initiatives listed in No. 5 and 6 here?</p> <p>21 A. Did Safeway participate in either of the --</p> <p>22 okay. Again, they're -- we -- again, we're going</p> <p>23 back a long time ago. I just -- and I -- I don't</p> <p>24 recall. Perhaps we did. I just don't specifically</p> <p>25 recall.</p>	<p style="text-align: right;">128</p> <p>1 A. Yes.</p> <p>2 Q. And what do you recall about those phone</p> <p>3 conversations with her as it relates to eggs</p> <p>4 specifically?</p> <p>5 A. Well, again, it's -- eggs, I couldn't tell</p> <p>6 you about. But it was more broadly about animal</p> <p>7 welfare generally and -- and, you know, and, you</p> <p>8 know, what FMI was doing as it related to animal</p> <p>9 welfare and gathering information and helping the,</p> <p>10 you know, our company, and -- and, you know, set --</p> <p>11 set standards, gather information, best practices.</p> <p>12 It was -- it was, what's FMI doing? I was trying to</p> <p>13 educate myself and -- and get that from Karen.</p> <p>14 Q. And you were getting information about what</p> <p>15 FMI was doing with related -- with relation to</p> <p>16 animal welfare standards in order to help Safeway</p> <p>17 educate itself about what to do with regards to</p> <p>18 animal welfare standards at that time; right?</p> <p>19 A. Right. That's correct.</p> <p>20 (Exhibit 10 was marked for identification</p> <p>21 and attached hereto.)</p> <p>22 BY MR. FONTICILLA:</p> <p>23 Q. I'm handing what's been marked as</p> <p>24 Exhibit 10, Mr. Dowling. And please review that.</p> <p>25 Take your time.</p>
<p style="text-align: right;">127</p> <p>1 Q. Would it be fair to say Jonathan Mayes might</p> <p>2 recall?</p> <p>3 A. He -- he might, but -- he might. I don't</p> <p>4 know. You know, I was -- you know, I had phone</p> <p>5 conversations with Karen Brown as it relates to</p> <p>6 animal welfare, and I remember Karen specifically</p> <p>7 because, you know, I was sort of the point person</p> <p>8 on -- on this stuff.</p> <p>9 Again, this -- as it relates specifically</p> <p>10 to -- to the PETAs of the world where she was</p> <p>11 advising, you know, against any interaction with --</p> <p>12 with PETA. Let us do that. You know, you guys</p> <p>13 shouldn't. So that -- that's where, you know -- but</p> <p>14 I think -- I think Jonathan's involvement was --</p> <p>15 was...</p> <p>16 Q. Do you recall any phone conversations?</p> <p>17 MR. MURRAY: Are you done? Are you done</p> <p>18 talking?</p> <p>19 THE WITNESS: I'm done, yeah. I'm done,</p> <p>20 yeah.</p> <p>21 BY MR. FONTICILLA:</p> <p>22 Q. Do you recall any phone conversations with a</p> <p>23 Miss Brown in or around late 2000, early 2001,</p> <p>24 related to FMI's efforts to adopt an industrywide</p> <p>25 standard?</p>	<p style="text-align: right;">129</p> <p>1 A. Okay.</p> <p>2 Q. And for the record, this is a confidential</p> <p>3 document Bates stamped FMI-001143.</p> <p>4 A. Okay. Yeah, I've -- I have seen this.</p> <p>5 Q. And when did you see this document?</p> <p>6 A. In my research here in the last week or so,</p> <p>7 I -- I recall seeing this document.</p> <p>8 Q. And do you know who --</p> <p>9 A. I don't recall where I saw it, but, any way.</p> <p>10 Q. And do you know -- at the top of this</p> <p>11 document, there is a -- it's a fax --</p> <p>12 A. Yeah.</p> <p>13 Q. -- to various representatives of FMI</p> <p>14 members; correct?</p> <p>15 A. Right.</p> <p>16 Q. And this is from -- from the FMI?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And in this fax, it -- it was sent to a</p> <p>19 Miss Lambert --</p> <p>20 A. Right.</p> <p>21 Q. -- at Safeway; right?</p> <p>22 A. Yes.</p> <p>23 Q. And who was Miss Lambert?</p> <p>24 A. She was our director of corporate public</p> <p>25 affairs. She worked for me at that time.</p>

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Brian Dowling

April 11, 2014

34 (Pages 130 to 133)

<p style="text-align: right;">130</p> <p>1 Q. Does she still work at Safeway? 2 A. She does not. 3 Q. And when did she leave Safeway? 4 A. She would have left probably in 2002, 2003. 5 2003, I'm going to -- I'm going to guess. 6 Q. Do you have an understanding of why 7 Miss Lambert received this fax from FMI? 8 A. She may have had interaction with -- with 9 Karen, you know, on this issue, and I think 10 that's -- that's why she, you know. Debra, I 11 believe, served on the communications committee of 12 FMI because I'm looking at all these others; Mickey 13 Clerc, her cousin, who I know, Lynn Marmer, they're 14 all -- 15 THE REPORTER: I'm sorry, Mickey? 16 THE WITNESS: Clerc, C-l-e-r-c. 17 These are all communications executives at 18 these various companies, and I know all of them. 19 Well, Odonna Matthews, is now -- she's a 20 community relations person at Giant, but the rest of 21 them are -- are all, as I recall, you know, 22 communications folks. 23 BY MR. FONTICILLA: 24 Q. Is it your understanding that this list of 25 individuals here who received this fax were members</p>	<p style="text-align: right;">132</p> <p>1 fax, is -- is attached on -- starting on the second 2 page. 3 A. Uh-huh. 4 Q. And it's titled "Animal Welfare Conference 5 Call, June 6, 2001." 6 Do you see that? 7 A. I do. 8 Q. And it -- it states that there are certain 9 FMI members who participated. 10 A. Uh-huh. 11 Q. Do you see that? 12 A. Yes. 13 Q. Do you recognize Nancy Yanish or Jill 14 Hollingsworth? 15 A. I -- Nancy Yanish, vaguely; Jill 16 Hollingsworth, I -- I do know her, she is -- yes. 17 Q. Did you have any discussions with Karen 18 Brown, Nancy Yanish, or Jill Hollingsworth in or 19 around June 2001, regarding FMI's involvement with 20 animal welfare experts? 21 A. I -- if I had any conversation, it would 22 have been with Karen. 23 Q. And do you recall any? 24 A. I -- not specifically, but I -- I could have 25 had discussions with Karen, but it wouldn't have</p>
<p style="text-align: right;">131</p> <p>1 of FMI's communications committee? 2 A. I believe they were. 3 Q. And the fax states that, Enclosed for your 4 reading -- and the fax is dated June of 2001; 5 correct? 6 A. Uh-huh. 7 Q. Do you remember discussing with Miss Lambert 8 around June 2001, what her involvement at the FMI 9 meetings or FMI committees were? 10 A. I don't recall. 11 Q. And the first item, it says, is included 12 with this fax is a summary of FMI's conference call 13 with its animal welfare experts. 14 Do you see that? 15 A. Uh-huh. 16 Q. Do you recall receiving a report or any 17 information about animal welfare experts that FMI 18 was discussing -- was having discussions with? 19 A. Do I recall receiving a report? 20 Q. I mean, do you recall receiving any 21 information regarding FMI's involvement with animal 22 welfare experts around June of 2001? 23 A. I -- I could have, yes, but I don't recall 24 specifically, but I could have in this timeframe. 25 Q. And the attachment that is referenced in the</p>	<p style="text-align: right;">133</p> <p>1 been Nancy or with Jill that I can -- 2 Q. Why -- 3 A. That I remember. 4 Q. Excuse me. I didn't mean to cut you off. 5 A. That's okay. 6 Q. What involvement, if any, did Safeway have 7 in discussing animal welfare issues on Safeway's 8 communications committee? 9 A. Well, Debra clearly would have had some 10 involvement. I think it probably would have been 11 more, I think, with her. I think at this stage, it 12 would have been more a -- sort of monitoring role to 13 sort of understand, you know, the work that FMI was 14 doing. 15 Q. And what work was FMI doing around this time 16 related to animal welfare standards as it applies to 17 suppliers of eggs? 18 A. Well, it's -- they clearly had -- had 19 started here and its referenced in -- on the second 20 page as it relates to egg laying hens and that's 21 the -- so they clearly were working on it. 22 Q. And under "Expert Review Panel," it lists 23 four individuals. 24 Do you see those names? 25 A. I do.</p>

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Brian Dowling

April 11, 2014

35 (Pages 134 to 137)

134	136
<p>1 Q. One of them is Dr. Grandin, who we discussed 2 earlier; right?</p> <p>3 A. Yep.</p> <p>4 Q. And do you recognize the other names?</p> <p>5 A. I -- I recognize Adele Douglass' name.</p> <p>6 Q. And how do you --</p> <p>7 A. Just -- just being with the American, American Humane --</p> <p>8 THE REPORTER: I recognize, what's the name?</p> <p>9 THE WITNESS: Adele Douglass.</p> <p>10 MR. MURRAY: A-d-e-l-e.</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. And do you recall any of your discussions 13 with Miss Grandin regarding animal welfare issues 14 that FMI was discussing in or around this time?</p> <p>15 A. I -- I don't specifically recall.</p> <p>16 Q. And later in this document under "Summary of 17 General Comments," there are a few bullet points.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And then if you focus on the third and 21 fourth bullet points, do you see that the third one 22 says that an effective standard must have a means 23 for measuring compliance?</p> <p>24 Do you see that?</p>	<p>1 THE REPORTER: Okay. One more time?</p> <p>2 MR. FONTECILLA: Sorry.</p> <p>3 BY MR. FONTECILLA:</p> <p>4 Q. "Guidelines are ineffective if they use 5 terms like 'do adequately' or 'provide sufficient 6 space.'"</p> <p>7 Do you see that?</p> <p>8 A. I do see that.</p> <p>9 Q. Do you agree with the statements that are 10 made in bullet points 3 and 4?</p> <p>11 MR. MURRAY: Objection. Outside the scope 12 of his designation.</p> <p>13 You can answer, if you know.</p> <p>14 THE WITNESS: Yeah, I just -- I just don't 15 know. Again, it is -- it is really outside the 16 scope of my -- my expertise.</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. Did Safeway ever consider the efficacy of 19 standards as they relate to animal welfare issues 20 that did not measure compliance?</p> <p>21 MR. MURRAY: Same objection.</p> <p>22 THE WITNESS: I don't -- I don't know. I 23 mean, I...</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. And then you referred earlier to a section</p>
135	137
<p>1 A. Yes.</p> <p>2 Q. Do you recall Safeway considering any 3 compliance measuring standards in or around this 4 time as it related to egg suppliers?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you -- was Safeway involved in FMI's 7 consideration of how to measure compliance with 8 animal welfare standards as they related to egg 9 suppliers?</p> <p>10 A. I'm sure we were, but not that I can recall at -- at that stage.</p> <p>11 Q. And who at Safeway would have been involved?</p> <p>12 A. There could have been folks on our -- our QA side of the business. I think that's where there was more involvement that was, you know -- you know, but not -- not myself.</p> <p>13 Q. And the fourth bullet point says that "The 14 only effective welfare and handling standards are 15 those that have a quantitative scoring system and 16 monitoring."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then it says, "Guidelines are 20 ineffective if they use terms like 'do adequately' 21 or 'provide sufficient space.'"</p>	<p>1 on page 2 and 3 of the conference call summary --</p> <p>2 A. Yes.</p> <p>3 Q. -- related to egg layers; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And reviewing the bullet points under there, 6 do you recall whether -- well, let me strike that.</p> <p>7 Did Safeway have any involvement in 8 discussing the issues referenced in this section 9 related to egg layers as it related to FMI or FMI 10 committees?</p> <p>11 A. It appears that we did since we've got people who received this, but I -- I didn't -- I don't know specifically who, you know. But that's where I think our -- our quality assurance people would have had input here, but not me.</p> <p>12 Q. And for the record, you didn't discuss or 13 prepare for your deposition by discussing or talking 14 to any of those folks?</p> <p>15 A. I did not. I did not.</p> <p>16 (Exhibit 11 was marked for identification and attached hereto.)</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. I'm handing you what's been marked as 19 Exhibit 11. Take your time to review this document,</p> <p>20 Mr. Dowling.</p>

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Brian Dowling

April 11, 2014

36 (Pages 138 to 141)

<p style="text-align: right;">138</p> <p>1 A. Okay. 2 Q. For the record, this is a confidential 3 document Bates stamped FMI-001129. 4 A. Okay. I do recall seeing this. 5 Q. And when do you recall seeing this document? 6 A. Sometime in the last week or so as I was 7 reviewing documents. I -- this is -- I've seen a 8 version of this. I -- the reason I do is I 9 recognize Rich Calhoun and Rory Frink, both -- both 10 who have left the company, but who I knew well. 11 Q. And before reviewing this document in the 12 last few days or weeks in preparation for your 13 deposition, had you ever seen this document before 14 then? 15 A. I -- I might have, but I don't -- I don't 16 recall seeing it before that. I -- Debra may have 17 shown it to me because I see she's cc'd here, but 18 I -- I, you know -- I may have -- I could well have 19 seen it before -- before this time because it's -- 20 it's, you know, a board-approved policy statement. 21 Q. And why do you say that you would have seen 22 a board-approved policy statement -- 23 A. Well, I think at this stage -- I'm sorry. 24 Q. So just so the court reporter can get 25 everything down, just wait until I finish the</p>	<p style="text-align: right;">140</p> <p>1 would have been engaged at some level, at least an 2 awareness level at this point. 3 Q. Do you -- I'm sorry. Go ahead. 4 A. No, that's it. 5 Q. Do you recall being involved in reviewing 6 the FMI board policy before it was approved? 7 A. I don't recall that. 8 Q. Do you recall discussing with anyone who 9 attended FMI meetings on behalf of Safeway, 10 discussing the FMI board-approved policy? 11 A. I do not recall that. 12 Q. This document that's been stamped as 13 Exhibit 11 is a fax from FMI to certain 14 representatives of FMI members; correct? 15 A. Yes. 16 Q. You stated that you recognize some of the 17 names; right? 18 A. Yes. 19 Q. And there's a few names from Safeway, 20 including Craig Bolton and Rich Calhoun; correct? 21 A. Yes. 22 Q. And it also includes Rory Frink and Tom 23 Siwek. 24 A. Yeah. Yes. 25 Q. Who are each of those individuals?</p>
<p style="text-align: right;">139</p> <p>1 question -- 2 A. Sorry, my apologies. 3 Q. -- it may seem a little long, but -- 4 MR. MURRAY: You have to slow down. 5 THE WITNESS: Yep. Sorry. 6 BY MR. FONTECILLA: 7 Q. So my question was, why do you say that you 8 would have seen a board-approved policy statement 9 from FMI? 10 A. I -- I think at -- sort of at this stage, 11 and given my involvement here, this is something 12 that would have come -- this is probably something 13 that I would have seen. It would have come in front 14 of me in one form or another and I -- I recall 15 seeing -- my recollection, I recall seeing this. 16 Again, it was a long time ago, but I do recall 17 seeing. 18 Q. And what was the involvement that would 19 require you seeing a FMI board-approved policy? 20 A. Well, because I think, you know, again, we 21 were -- we were -- you know, I -- I was engaged with 22 the -- with the issue, even at this point, you know, 23 animal welfare generally. It was early, early 24 stage, but I believe since it relates to an issue 25 like this that I would have been in the loop and I</p>	<p style="text-align: right;">141</p> <p>1 A. I don't know Craig. I don't know Tom. I 2 believe Tom is on the buying side of our business. 3 Rich Calhoun was a quality assurance executive with 4 Safeway. Rory Frink was -- managed the meat and 5 merchandising function at Safeway. Merchandising, 6 pricing, store displays, you know, supply. 7 Q. And do you recall any discussions with 8 anyone at Safeway who is referenced here in this 9 document about this particular July 9th meeting in 10 Chicago? 11 A. I -- I don't specifically recall. I -- I 12 might have, but I don't specifically 13 recall -- recall. If I would have had any 14 conversation, it would have been with Rich or with 15 Rory or with Debra, but I'm not specifically 16 recalling any conversation specifically about this 17 document. 18 Q. Are any of the individuals who are Safeway 19 representatives on this document still employed by 20 Safeway? 21 A. I think Tom is still. I don't know about 22 Craig Bolton. But Rich Calhoun is not, Rory Frink 23 is not, Rory left the company. He's now a minister. 24 Rich Calhoun, I think, retired. Debra Lambert left 25 the company.</p>

HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

37 (Pages 142 to 145)

<p style="text-align: right;">142</p> <p>1 Q. And do you know Mr. Siwek's position today?</p> <p>2 A. I -- I don't know. I think he -- I think</p> <p>3 he's a buyer, you know, on the buying team in</p> <p>4 Denver. I just don't know that for sure. I don't</p> <p>5 have any contact with him, but I -- his name is</p> <p>6 familiar and I -- I seem to recall that he's on the</p> <p>7 buying team.</p> <p>8 Q. FMI, around this time period of 2001,</p> <p>9 solicited Safeway's input in helping it developing</p> <p>10 an industrywide set of guidelines for its animal</p> <p>11 welfare policies; correct?</p> <p>12 A. Yes.</p> <p>13 Q. That was because those policies that FMI</p> <p>14 would adopt would eventually be adopted by Safeway</p> <p>15 as well as an FMI member; correct?</p> <p>16 MR. MURRAY: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: That would -- that's the idea,</p> <p>19 yes, that we would -- we would -- yes.</p> <p>20 BY MR. FONTECILLA:</p> <p>21 Q. And Safeway sent representatives to FMI</p> <p>22 meetings in order to learn about what FMI was doing</p> <p>23 with regards to animal welfare policies; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And specifically as to the consideration of</p>	<p style="text-align: right;">144</p> <p>1 Q. And if we go to the second page of this</p> <p>2 exhibit, you'll see it has a meeting schedule.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And part of the meeting schedule involves</p> <p>6 comments from McDonalds' representatives.</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Safeway knew that FMI was soliciting the</p> <p>10 input of food -- fast-food chains in consideration</p> <p>11 of an industrywide animal welfare standard for</p> <p>12 retailers; correct?</p> <p>13 A. Correct.</p> <p>14 MR. MURRAY: Object to the form of the</p> <p>15 statement. Or object to the form of the question.</p> <p>16 Mischaracterizes the document.</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. And in the next page of this document --</p> <p>19 MR. FONTECILLA: Let the record reflect that</p> <p>20 counsel is instructing --</p> <p>21 MR. MURRAY: I'm telling him to slow down is</p> <p>22 what I was telling him.</p> <p>23 MR. FONTECILLA: Just make the record</p> <p>24 clear --</p> <p>25 MR. MURRAY: Yeah, okay. I'll make it</p>
<p style="text-align: right;">143</p> <p>1 adopting and designing an industrywide animal</p> <p>2 welfare policy; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And that would involve animal welfare</p> <p>5 policies as they apply to egg suppliers; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Safeway would also send representatives</p> <p>8 to these FMI meetings in order to provide Safeway's</p> <p>9 input or insight about animal welfare issues so that</p> <p>10 FMI could consider it when developing this</p> <p>11 industrywide standard in or around 2001; correct?</p> <p>12 A. Correct. I wasn't involved in any of this,</p> <p>13 but correct.</p> <p>14 Q. And what input did Safeway provide to FMI in</p> <p>15 or around this time to assist FMI in designing and</p> <p>16 developing an industrywide guideline for animal</p> <p>17 welfare issues?</p> <p>18 A. Well, and that's, again, where I'm at a</p> <p>19 disadvantage. At this stage, I wasn't -- you know,</p> <p>20 I'm -- I'm -- it would have been Rich's and Rory's</p> <p>21 input and Tom and the other, and it was -- but not</p> <p>22 mine. So they were obviously providing input on</p> <p>23 these issues at some level. They're all very</p> <p>24 capable, competent folks, but -- but I wasn't</p> <p>25 involved in any of that input.</p>	<p style="text-align: right;">145</p> <p>1 clear. I was telling him to slow down because we're</p> <p>2 talking over each other.</p> <p>3 THE WITNESS: Well, that's what the -- well,</p> <p>4 that's we talked about in there, is slow down and</p> <p>5 read the documents. That was what he instructed me</p> <p>6 to do, and so I'm not following that like I should,</p> <p>7 so...</p> <p>8 BY MR. FONTECILLA:</p> <p>9 Q. In the third page of this document,</p> <p>10 Exhibit 11, there is the board-approved policy that</p> <p>11 FMI adopted on January 14, 2001; correct?</p> <p>12 A. Yep. Yes.</p> <p>13 Q. Safeway was involved in designing and</p> <p>14 developing FMI's board-approved policy that's listed</p> <p>15 here; correct?</p> <p>16 A. That -- that appears to be the case, yes.</p> <p>17 Q. And what input or insight did Safeway</p> <p>18 provide to FMI's board in connection with developing</p> <p>19 this animal welfare policy that was adopted on</p> <p>20 January 14, 2001?</p> <p>21 A. Again, that would be a question that would</p> <p>22 have to be posed to -- to these other folks who were</p> <p>23 involved in this. I had -- I -- I don't recall</p> <p>24 having specific input. I -- I don't recall</p> <p>25 conversations with Rich or Rory or Craig or Tom on</p>

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Brian Dowling

April 11, 2014

38 (Pages 146 to 149)

<p style="text-align: right;">146</p> <p>1 any of this. I'm just not recalling. It was a long 2 time ago.</p> <p>3 Q. Sure. Would anyone else currently at 4 Safeway have received information from these 5 individuals about their attendance at the meeting or 6 about their involvement in developing this 7 board-approved policy?</p> <p>8 MR. MURRAY: Objection. Calls for 9 speculation.</p> <p>10 THE WITNESS: Yeah, I don't know. I -- I 11 don't -- I can't -- I don't know. Not -- okay. Not 12 that I'm aware of anybody currently at Safeway.</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. Tom Siwek might know; right?</p> <p>15 A. He might --</p> <p>16 MR. MURRAY: Objection to the form of the 17 question.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 MR. MURRAY: Calls for speculation.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 MR. MURRAY: Please slow down a little so I 22 can get my objections in.</p> <p>23 THE WITNESS: I apologize. I apologize.</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. Do you recognize this board-approved policy?</p>	<p style="text-align: right;">148</p> <p>1 that.</p> <p>2 Q. On the page that's stamped at the bottom 3 1132 in Exhibit 11, there's a work plan.</p> <p>4 Do you see that?</p> <p>5 A. 1132. Work plan. Yes. Sorry.</p> <p>6 Q. And the -- and the work plan goes on for two 7 pages; right?</p> <p>8 A. Yep. Right.</p> <p>9 Q. Do you recall seeing this work plan?</p> <p>10 A. I do not.</p> <p>11 Q. Was Safeway involved in any of the bullet 12 points of this work plan listed under the section 13 December 1st to January 5th?</p> <p>14 A. We -- we may have been. We probably were, 15 but -- but I was not involved in any of this.</p> <p>16 Q. And which ones specifically was Safeway 17 involved in with regards to the December 1st to 18 January 5th aspects of this work plan issued by FMI?</p> <p>19 A. Again, I -- I'm not specifically -- let me 20 just read this. I'll back up a little bit here.</p> <p>21 Could you ask the question again, then?</p> <p>22 Q. Sure. Looking specifically at the work plan 23 items that FMI had planned for December 1st to 24 January 5th as reflected in this document --</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">147</p> <p>1 A. I recall seeing it. I do generally 2 recognize it, yes.</p> <p>3 Q. And when was the first time that you saw 4 this policy?</p> <p>5 A. It probably would have been in or around 6 2000, early 2001.</p> <p>7 Q. And what was the context surrounding you 8 reviewing this policy in or around 2001?</p> <p>9 A. I don't recall specifically.</p> <p>10 Q. Do you recall discussing this policy with 11 anyone else at Safeway in or around 2001?</p> <p>12 A. I don't specifically recall. I might have 13 had some conversation. I -- but I'm not 14 specifically recalling what those conversations 15 were.</p> <p>16 Q. At this time of the adoption of FMI's 17 board-approved policy on January 14th, 2001, Safeway 18 was represented on FMI's board; correct?</p> <p>19 A. I believe so. I don't know for sure, but I 20 believe so.</p> <p>21 Q. Did Safeway solicit input from egg 22 manufacturers or the egg suppliers that supplied 23 Safeway with eggs in connection with providing its 24 input to FMI around this time period?</p> <p>25 A. It may have, but I wasn't involved in any of</p>	<p style="text-align: right;">149</p> <p>1 Q. -- which one of these was Safeway involved 2 in, if any?</p> <p>3 A. I don't know specifically which one.</p> <p>4 THE REPORTER: I'm sorry, I missed the date.</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. From December 1st to January 5th, which one 7 of these was Safeway involved in, if any?</p> <p>8 A. I -- I don't know.</p> <p>9 Q. And looking at the section titled, January 10 6th to 31st, which one of those items, if any, was 11 Safeway involved in?</p> <p>12 A. We could have been involved in all of them. 13 I don't know for sure, however.</p> <p>14 Q. And would your answer be the same if I had 15 asked you about Safeway's involvement as to the 16 items in this work plan for these sections on the 17 following page as well?</p> <p>18 A. Yes.</p> <p>19 Q. And would anyone else at Safeway, to the 20 best of your knowledge, know or have any information 21 about Safeway's involvement in these work plan 22 items?</p> <p>23 A. There may be someone, but, again, these 24 folks, you know, the two key people who I had 25 interaction with, Rory and Rich, are gone. I</p>

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Brian Dowling

April 11, 2014

39 (Pages 150 to 153)

<p style="text-align: right;">150</p> <p>1 don't -- I'm not sure who currently would have -- 2 would recall specifically this in -- a lot of people 3 have left the company a long time ago.</p> <p>4 Q. And after Safeway -- or excuse me. Strike 5 that.</p> <p>6 After FMI adopted this board-approved policy 7 for animal welfare in January 14th of 2001, what did 8 Safeway do to -- with that policy?</p> <p>9 A. You know, I'd have to -- I'd have to, you 10 know, I'm just reading through it here again.</p> <p>11 MR. MURRAY: Take your time and read the 12 whole thing.</p> <p>13 THE WITNESS: You know, again, a long time 14 ago. I can't recall specifically what we did with 15 it once we got it, whether or not we, you know, 16 shoved it under someone's nose at a particular desk 17 and said, go forward and this will be our mandate 18 going forward. I -- I couldn't tell you 19 specifically.</p> <p>20 BY MR. FONTICILLA:</p> <p>21 Q. Did Safeway issue any press releases 22 announcing that -- that FMI's board had adopted this 23 policy?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Did Safeway contact any third-party experts</p>	<p style="text-align: right;">152</p> <p>1 involved with this part of it. 2 BY MR. FONTICILLA: 3 Q. Did Safeway meet with anyone in the 4 producer, egg producer community regarding the FMI 5 board-approved policy of animal welfare issues 6 that's in this exhibit?</p> <p>7 A. We may have, but not that I'm aware of. 8 Q. Did Safeway discuss FMI's board-approved 9 policy in this exhibit with any individuals in the 10 restaurant industry?</p> <p>11 A. Did Safeway? Not that I'm aware of. 12 Q. Did Safeway discuss the FMI board-approved 13 policy in this exhibit with anyone at PETA or at 14 HSUS?</p> <p>15 A. There -- there might have been, you know, 16 might have been, you know, again, '01. Pardon me 17 for -- at this stage, probably not. Not with PETA 18 at this stage. Discussions with them came later.</p> <p>19 Q. In this Exhibit 11, if you turn to the page 20 that's Bates stamped 1138 -- excuse me -- 1138 at 21 the bottom.</p> <p>22 A. Yep.</p> <p>23 Q. This is a page and a document entitled 24 "McDonald's Animal Welfare Guiding Principles." 25 Do you see that?</p>
<p style="text-align: right;">151</p> <p>1 related to animal welfare issues to evaluate FMI's 2 board-approved policy?</p> <p>3 A. Not that I can recall.</p> <p>4 Q. Did -- did Safeway convene any meetings 5 internally to discuss FMI's board-approved policy in 6 or around this time?</p> <p>7 A. Not that I was directly involved in that I 8 can -- that I can remember.</p> <p>9 Q. What about your awareness in preparation for 10 this deposition about any efforts by Safeway to 11 incorporate this board-approved policy into 12 Safeway's own policies?</p> <p>13 MR. MURRAY: Objection. Outside the scope. 14 You can answer.</p> <p>15 THE WITNESS: Yeah. Again, I -- I just -- 16 again, it's just not -- I mean, at -- at this -- at 17 this stage, I was not directly involved in -- in a 18 lot of this. I mean, that came later when we -- we 19 first, you know, the -- the issue got sort of raised 20 in the public profile and I was more directly called 21 upon to -- to just sort of deal with the issue as it 22 related to issues raised by PETA. But at this 23 stage, my -- my involvement was -- was sort of 24 tangential. I mean, maybe that's not the best word. 25 It was -- it was not as direct and I wasn't deeply</p>	<p style="text-align: right;">153</p> <p>1 A. I do. 2 Q. Do you recognize this document?</p> <p>3 A. I -- I really don't. I -- I may have seen 4 this at some point, but I'm not immediately 5 recalling seeing this.</p> <p>6 Q. And then the page after that is a document 7 titled "Major Actions Taken with Advice of Animal 8 Welfare Council" by McDonald's USA in August of 9 2000.</p> <p>10 Do you see that?</p> <p>11 A. I see that. 12 Q. Do you recognize this document?</p> <p>13 A. No, I don't specifically recall seeing this. 14 Q. Safeway was aware that McDonald's had 15 adopted animal welfare principles in or around 2000; 16 correct?</p> <p>17 A. We may have been. I mean, I -- at that 18 stage, in 2000?</p> <p>19 Q. Safeway was aware in 2001 that -- so we're 20 focusing on when this meeting occurred --</p> <p>21 A. Right. 22 Q. -- with the board policy in 2001.</p> <p>23 Safeway was aware in 2001 that McDonald's 24 had already adopted animal welfare principles; 25 correct?</p>

HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

40 (Pages 154 to 157)

<p style="text-align: right;">154</p> <p>1 A. I believe that's correct, yes. 2 Q. And Safeway -- 3 A. Again, yes, because, again, these folks attending this would have been tuned into it, yes. 4 Q. And Safeway understood that McDonald's had 5 adopted animal welfare principles specifically as to 6 caged egg laying hens; correct? 7 A. I believe that's true, yes. 8 Q. And Safeway considered McDonald's animal 9 welfare principles in developing its own animal 10 welfare principles around 2001; correct? 11 MR. MURRAY: Object to the form of the 12 question. 13 THE WITNESS: Not -- not specifically. 14 my -- again, the interaction with McDonald's was -- 15 was more just sort of, you know, at least mine, 16 again, I can't speak to anybody else who might have 17 had conversations with McDonald's. I don't believe 18 anybody would have, like a Rich Calhoun or a Rory 19 Frink. You know, my interactions with -- with 20 McDonald's, which were limited to probably a single 21 phone conversation, were to sort of understand how 22 they -- how they dealt with some of these external 23 organizations. It was more than than it was sort of 24 the guts of specific policies as it relates to, you</p>	<p style="text-align: right;">156</p> <p>1 BY MR. FONTECILLA: 2 Q. Sure. Let me rephrase it. 3 Safeway, in or around 2001, was aware that 4 McDonald's had adopted an animal welfare policy; 5 right? 6 A. Correct. 7 Q. And -- 8 A. As far as I know. 9 Q. And Safeway was aware that McDonald's had 10 considered or evaluated the UEP Scientific Advisory 11 Committee's recommendations around that time; 12 correct? 13 A. I don't know -- 14 MR. MURRAY: Objection to the form of the 15 question. Calls for speculation. 16 THE WITNESS: I don't know that. I don't 17 know that. 18 BY MR. FONTECILLA: 19 Q. And Safeway was aware that McDonald's had 20 adopted a policy that required a space per bird that 21 was of minimum of 72 square inches; correct? 22 A. I -- 23 MR. MURRAY: Objection to the form of the 24 question. Lack of foundation. Calls for 25 speculation.</p>
<p style="text-align: right;">155</p> <p>1 know, eggs or anything else for that matter. 2 BY MR. FONTECILLA: 3 Q. And on the page Bates stamped 1139, the 4 second page of the actions taken with advice of 5 Animal Welfare Council by McDonald's. 6 A. Right. We're on 1139, still? 7 Q. Yes. 8 A. Okay. 9 Q. Do you see the section titled "New Laying 10 Hen Policy"?</p> <p>11 A. Yes. 12 Q. It says, "McDonald's USA will purchase eggs 13 from suppliers who adopt the UEP's Scientific 14 Advisory Committee recommendations." 15 Do you see that?</p> <p>16 A. I do. 17 Q. Safeway was aware that McDonald's had 18 adopted certain policies as it related to the 19 Scientific Advisory Committee's recommendations by 20 UEP; correct?</p> <p>21 MR. MURRAY: Object to the form of the 22 question. Lack of foundation.</p> <p>23 THE WITNESS: Could you ask -- ask the 24 question again, please?</p> <p>25 ///</p>	<p style="text-align: right;">157</p> <p>1 THE WITNESS: Yeah, I don't know that. 2 Yeah. I don't know. 3 BY MR. FONTECILLA: 4 Q. Who at Safeway would have evaluated policies 5 adopted by fast-food chains regarding the animal 6 welfare practices that they require of their egg 7 suppliers?</p> <p>8 A. Again, it could have been someone like</p> <p>9 Rory -- or excuse me, not Rory Frink. It could have</p> <p>10 been someone like Rich Calhoun or someone on his</p> <p>11 team.</p> <p>12 Q. And that's the QA team?</p> <p>13 A. Yes. David Lawrence.</p> <p>14 Q. And David Lawrence is still employed with</p> <p>15 Safeway?</p> <p>16 A. I believe so. I mean, I haven't had contact</p> <p>17 with David in a long time, you know. I -- I believe</p> <p>18 so. And I think at the time, he worked for Rich</p> <p>19 Calhoun.</p> <p>20 (Exhibit 12 was marked for identification</p> <p>21 and attached hereto.)</p> <p>22 BY MR. FONTECILLA:</p> <p>23 Q. I'm handing you what's been marked as</p> <p>24 Exhibit 12, Mr. Dowling. For the record, this is a</p> <p>25 confidential document Bates stamped UE0178685.</p>

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Brian Dowling

April 11, 2014

41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1 Have you ever seen this document before, 2 Mr. Dowling?</p> <p>3 A. I don't --</p> <p>4 MR. MURRAY: Read -- read the whole thing.</p> <p>5 THE WITNESS: Okay. Yeah. I'm -- I'll read 6 it. Okay.</p> <p>7 BY MR. FONTECILLA:</p> <p>8 Q. So this is a letter or a fax, and it's 9 titled, "FMI Task Force on Animal Welfare 10 Standards."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Are you aware of a task force at FMI on 14 animal welfare standards?</p> <p>15 A. Yes.</p> <p>16 Q. And what was Safeway's participation in the 17 FMI task force on animal welfare standards?</p> <p>18 A. Again, this sort of predates my -- you know, 19 my first sort of awareness and understanding of some 20 of this stuff was -- was when we first, you know, 21 made contact or were contacted by PETA, you know. 22 But as I see here, again, Susan Adams, who 23 has left the company, who I knew, Rich Calhoun, they 24 were more deeply engaged in this than I was. And -- 25 but, you know, at this stage, my knowledge was --</p>	<p style="text-align: right;">160</p> <p>1 Q. And the next paragraph states that Susan 2 Adams and Rich Calhoun represent Safeway on the FMI 3 task force on animal welfare standards; right?</p> <p>4 A. Correct.</p> <p>5 Q. And who is Susan Adams?</p> <p>6 A. She worked for Rich as a QA person.</p> <p>7 Q. And does she still work at Safeway?</p> <p>8 A. No, she doesn't. She's retired.</p> <p>9 MR. MURRAY: Objection. Asked and answered. 10 But go on.</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. And do you -- are you aware of any meeting 13 that Susan Adams and Rich Calhoun had in preparation 14 for the July 1st, 2001 meeting in Chicago?</p> <p>15 A. I'm not aware of any preparation meeting.</p> <p>16 Q. And in that last paragraph of this 17 Exhibit 12, do you see the reference to Chuck Elste, 18 the author of this letter, meeting with Susan and 19 Rich?</p> <p>20 A. I do.</p> <p>21 Q. And were -- are you aware of this meeting 22 having occurred?</p> <p>23 A. I'm not recalling that it occurred. I -- I 24 don't recall this occurring. I'm not -- again, long 25 time ago.</p>
<p style="text-align: right;">159</p> <p>1 was limited as to sort of what they were doing, and, 2 you know, our involvement.</p> <p>3 It -- it was later in sort of conversations 4 that I had with Karen at FMI that I had sort of a 5 clear understanding that -- that FMI had been 6 working on the issue.</p> <p>7 Q. Is your testimony today about Safeway's 8 involvement on the FMI task force on animal welfare 9 standards limited to your personal capacity and 10 personal memory?</p> <p>11 A. Yes.</p> <p>12 Q. And in this document, about halfway down -- 13 well, actually, it states in the second paragraph, 14 "On Monday, July 9th, 2001, a task force of industry 15 representatives will meet to discuss animal welfare 16 standards" --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- and whether or not the retail food 19 industry should take action in mandating production 20 disciplines for animal agriculture"; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And that's referring to the meeting in the 23 last Exhibit 11 where the FMI board-approved policy 24 was attached; correct?</p> <p>25 A. Uh-huh. Right.</p>	<p style="text-align: right;">161</p> <p>1 Q. And so this meeting with Susan and Rich, as 2 reflected in the last paragraph, reflects that 3 Safeway met with NuCal in preparation for its 4 participation at FMI's July 9th, 2001 meeting; 5 correct?</p> <p>6 A. It appears that way, yes.</p> <p>7 Q. And NuCal educated Safeway about certain 8 issues related to animal welfare guidelines 9 established by UEP; correct?</p> <p>10 MR. MURRAY: Objection to the form of the 11 question. Calls for speculation. Lack of 12 foundation.</p> <p>13 THE WITNESS: Repeat the question, please.</p> <p>14 BY MR. FONTECILLA:</p> <p>15 Q. Safeway had discussions with NuCal prior to 16 the July 9th, 2001 FMI meeting about animal welfare 17 guidelines established by UEP; correct?</p> <p>18 MR. MURRAY: Objection. Lack of foundation. 19 You can answer, if you know.</p> <p>20 THE WITNESS: Yeah, I don't know. I don't 21 know.</p> <p>22 BY MR. FONTECILLA:</p> <p>23 Q. It says in this document that Safeway -- 24 A. Yeah, it appears -- it appears that 25 obviously Susan and Rich had some sort of</p>

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Brian Dowling

April 11, 2014

42 (Pages 162 to 165)

<p style="text-align: right;">162</p> <p>1 interaction. 2 Q. And -- 3 A. But not that I'm aware of. 4 Q. And the discussion between Susan and Rich at 5 Safeway, on the one hand, with NuCal, on the other 6 hand, involved certain discussions about the cost of 7 implementing added cage space program; right? 8 MR. MURRAY: Objection to the form of the 9 question. Calls for speculation. Lack of 10 foundation. 11 THE WITNESS: Yeah, I -- I don't -- I don't 12 have any... 13 BY MR. FONTECILLA: 14 Q. The document here in the last paragraph of 15 this Exhibit 12 does reflect a statement that 16 representatives of Safeway met with NuCal; correct? 17 A. It appears that way, but that, again, that's 18 all -- that's -- that would be speculation on my 19 part. I -- 20 Q. And the document states that as part of that 21 discussion, NuCal presented Safeway with certain 22 information about the cost of implementing an added 23 cage space program; correct? 24 A. It appears that they did have that 25 discussion, yes, from this document.</p>	<p style="text-align: right;">164</p> <p>1 MR. MURRAY: Objection. Lack of foundation. 2 Calls for speculation. 3 THE WITNESS: I -- again, I have no reason. 4 I don't have any understanding -- I -- any way. I'm 5 not helping you, so... 6 BY MR. FONTECILLA: 7 Q. Did Safeway in or around July of 2001, have 8 any discussions with any egg suppliers about the 9 cost of implementing the cage space requirements as 10 it related to egg production? 11 MR. MURRAY: Objection. Overly broad. 12 THE WITNESS: Yeah, not to my knowledge. 13 BY MR. FONTECILLA: 14 Q. Did Safeway have any discussions in or 15 around July of 2001 with egg suppliers about the UEP 16 guidelines? 17 MR. MURRAY: Objection. Overly broad. 18 Beyond the scope of this witness' designation. 19 You can answer, if you know. 20 THE WITNESS: I don't know. 21 BY MR. FONTECILLA: 22 Q. One of the topics we talked about that 23 you've been designated as a corporate designee is 24 Safeway's discussions with outside entities about 25 animal welfare issues; correct?</p>
<p style="text-align: right;">163</p> <p>1 Q. And that discussion also states that that 2 discussion involved NuCal presenting certain 3 information about the cost of implementing a no-molt 4 program; correct? 5 MR. MURRAY: Objection. Lack of foundation. 6 THE WITNESS: Again, I -- just from what I'm 7 reading here it appears, but otherwise, I -- I can't 8 speculate. 9 BY MR. FONTECILLA: 10 Q. Do you have any reason to believe that these 11 topics were not discussed between Safeway and NuCal 12 in or around July of 2001? 13 MR. MURRAY: Objection. Lack of foundation. 14 It calls for speculation. 15 THE WITNESS: Yeah, I don't know. 16 BY MR. FONTECILLA: 17 Q. Do you have any reason to believe that these 18 topics were not discussed? 19 MR. MURRAY: Same objections. 20 THE WITNESS: I -- do I have any reason -- 21 sorry. I'm -- I'm... 22 BY MR. FONTECILLA: 23 Q. Do you have any reason to believe that the 24 discussion, as reflected in this paragraph, is not 25 accurate?</p>	<p style="text-align: right;">165</p> <p>1 A. Correct. 2 Q. Some of those outside entities include 3 Safeway's producer community of eggs; correct? 4 MR. MURRAY: Objection. Objection. 5 that -- that calls for a legal conclusion. 6 THE WITNESS: Yeah, my interactions are, you 7 know, with outside groups, external groups. We 8 talked about PETA earlier and HSUS. That's -- 9 that's my interactions and that's -- that's my area 10 of expertise in as it relates to animal welfare. 11 MR. MURRAY: He's not been designated for 12 communications with vendors. 13 THE WITNESS: Yeah. 14 MR. FONTECILLA: All right. I think we 15 should take a lunch break. 16 THE VIDEOGRAPHER: Going off the record. 17 The time is 12:23 p.m. This marks the end of Disk 18 No. 2 in the deposition of Brian Dowling. 19 (Lunch was taken from 12:23 p.m. until 20 1:26 p.m.) 21 THE VIDEOGRAPHER: We're back on the record. 22 The time is 1:26 p.m. This marks the beginning of 23 Disk No. 3 in the deposition of Brian Dowling. 24 (Exhibit 13 was marked for identification 25 and attached hereto.)</p>

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Brian Dowling

April 11, 2014

43 (Pages 166 to 169)

<p style="text-align: right;">166</p> <p>1 BY MR. FONTECILLA: 2 Q. Mr. Dowling, I'm handing you what's been 3 marked as Exhibit 13. Please take a minute to 4 review the document, please. For the record, this 5 is a confidential document Bates stamped FMI-001714. 6 Looking at the first page of this document, 7 do you recognize this document? A. Not immediately. 8 Q. So we can walk through it, just different 9 parts of it. 10 MR. MURRAY: Give him a second to go through 11 it, please. 12 MR. FONTECILLA: Sure. 13 MR. MURRAY: He's still on the first page. 14 He should flip through the whole thing at least. 15 BY MR. FONTECILLA: 16 Q. So if you just want to flip through it and 17 then -- A. Yeah. Sure. 18 Q. -- we're going to walk through it, so we're 19 going to read through it together. It's a -- it's a 20 report or a document authored by Karen Brown at the 21 Food Marketing Institute. 22 Do you see that information? A. I do, yes.</p>	<p style="text-align: right;">168</p> <p>1 education, industry relations, and public affairs on 2 behalf of its 2300 member companies -- food 3 retailers and wholesalers -- in the United States 4 and around the world." 5 Do you see that? A. I do. 6 Q. Do you agree with that statement? A. Yes. 7 Q. And is Safeway one of FMI's members for 8 which it conducts programs in research, education, 9 industry relations, and public affairs? A. Yes. 10 Q. And as part of that effort that FMI does on 11 behalf of its members, does that include research 12 into animal welfare issues? 13 MR. MURRAY: Objection. 14 THE WITNESS: Rephrase it, ask the question 15 again. 16 BY MR. FONTECILLA: 17 Q. Yes. A. I'm sorry. 18 Q. It says that FMI conducts programs in 19 research, education, industry relations, and public 20 affairs on behalf of its member companies; right? A. Right.</p>
<p style="text-align: right;">167</p> <p>1 Q. And it's a document entitled "Global Animal 2 Welfare Challenges: Various Perspectives," "A 3 Market-Place Perspective." What was Safeway's 4 involvement, if any, in preparing or contributing to 5 the preparation of this document? 6 MR. MURRAY: Objection. Lack of foundation. 7 You can answer, if you know. 8 THE WITNESS: I'm not aware that we were -- 9 I don't know of any involvement with this. 10 BY MR. FONTECILLA: 11 Q. Does Safeway, or has Safeway, ever since 12 1999, contributed to reports prepared by FMI? A. We -- 13 MR. MURRAY: Overly broad. Objection. 14 You can answer, if you know. 15 THE WITNESS: I -- I don't know. I don't 16 know. 17 BY MR. FONTECILLA: 18 Q. Has -- has Safeway, ever since 1999, 19 contributed to the preparation of reports regarding 20 animal welfare issues? A. We may have, but I don't know. I'm not -- not to the best of my knowledge. I don't know. 22 Q. And in the first footnote of this document, 23 it says, "FMI conducts programs in research,</p>	<p style="text-align: right;">169</p> <p>1 Q. And that includes Safeway; right? A. Correct. 3 Q. And so does FMI conduct programs related to 4 the research of animal welfare issues on behalf of 5 Safeway? 6 MR. MURRAY: Objection. Calls for 7 speculation. Lack of foundation. 8 THE WITNESS: Yeah, I -- I couldn't say. 9 BY MR. FONTECILLA: 10 Q. Okay. Does Safeway know -- or let me strike 11 that. 12 Does Safeway ask FMI to conduct research on 13 its behalf? A. As a member -- you know, specifically, as it relates to animal welfare or? 16 Q. That is correct. A. You know, Safeway, you know, we asked, you know, FMI to provide. I spoke to Karen Brown about providing us with input and guidance on some of these issues, animal welfare issues, yes. 21 Q. And does -- A. And -- and there may be others that have done the same thing on other parts of, you know, the -- the animal welfare side of things, but I don't know that for a fact, but I've had that</p>

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Brian Dowling

April 11, 2014

44 (Pages 170 to 173)

<p style="text-align: right;">170</p> <p>1 conversation with Karen.</p> <p>2 Q. And Safeway asks FMI to help develop</p> <p>3 industrywide standards, as we saw, related to animal</p> <p>4 welfare standards; right?</p> <p>5 A. Yes.</p> <p>6 Q. And if you turn to page 2 of this document,</p> <p>7 you'll see the first paragraph that starts at the</p> <p>8 top, it says, "Late in 2000, five of FMI's</p> <p>9 supermarket company members asked FMI to develop a</p> <p>10 voluntary policy and program to address animal</p> <p>11 welfare that the entire supermarket industry can</p> <p>12 embrace."</p> <p>13 Do you see that?</p> <p>14 A. I do see that.</p> <p>15 Q. And the footnote that identifies which</p> <p>16 supermarket company members asked FMI to do that</p> <p>17 include five retailers.</p> <p>18 Do you see that, under Footnote 3?</p> <p>19 A. I do.</p> <p>20 Q. And one of those is Safeway; right?</p> <p>21 A. Yes.</p> <p>22 Q. So Safeway, late in 2000, asked FMI to</p> <p>23 develop an entire supermarket industry policy and</p> <p>24 program to address animal welfare; correct?</p> <p>25 MR. MURRAY: Objection. Mischaracterizes</p>	<p style="text-align: right;">172</p> <p>1 Q. Do you -- what is your understanding of the</p> <p>2 member company advisory committee that FMI formed in</p> <p>3 December 2000?</p> <p>4 A. I don't know anything about that. Well,</p> <p>5 again, my recollection, this goes back a long way,</p> <p>6 but I don't recall specifically who from Safeway</p> <p>7 served on that advisory committee and what our</p> <p>8 involvement was, you know, specifically in 2000.</p> <p>9 Q. But Safeway did serve on FMI's member</p> <p>10 company advisory committee?</p> <p>11 A. It appears that we did, yes.</p> <p>12 Q. And what was Safeway's role as a member or</p> <p>13 participant in that FMI member company advisory</p> <p>14 committee formed in 2000?</p> <p>15 A. Again, in 2000, I don't have any</p> <p>16 recollection specifically of what our role was</p> <p>17 because I wasn't involved.</p> <p>18 Q. At the top of page 3 of this Exhibit 13,</p> <p>19 there's a paragraph that starts "Following." It</p> <p>20 says, "Following the action of its Board of</p> <p>21 Directors, FMI began a series of meetings with the</p> <p>22 producer community."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. What was Safeway's involvement in the action</p>
<p style="text-align: right;">171</p> <p>1 the document.</p> <p>2 You can answer.</p> <p>3 BY MR. FONTECILLA:</p> <p>4 Q. And I'm not asking what the document says,</p> <p>5 but, you know, I'm asking in late 2000, Safeway was</p> <p>6 one of a few companies that asked FMI to develop a</p> <p>7 policy and program addressing animal welfare that</p> <p>8 the entire supermarket industry could embrace;</p> <p>9 correct?</p> <p>10 A. It -- it appears that way obviously from</p> <p>11 this. I wasn't involved in those discussions at</p> <p>12 that point with FMI.</p> <p>13 Q. Do you have any reason to believe that that</p> <p>14 statement is not correct?</p> <p>15 A. No.</p> <p>16 Q. And then in later in that paragraph, there</p> <p>17 is a sentence, the last sentence, and it starts</p> <p>18 with, In December.</p> <p>19 A. Uh-huh.</p> <p>20 Q. It says, In December 2000, FMI formed a</p> <p>21 member company advisory committee undertook</p> <p>22 qualitative focus group consumer research and began</p> <p>23 meetings with the producer community.</p> <p>24 Do you see that?</p> <p>25 A. I do see that.</p>	<p style="text-align: right;">173</p> <p>1 taken by its board of directors that precipitated</p> <p>2 FMI's meetings with the producer community as it's</p> <p>3 reflected in this document?</p> <p>4 MR. MURRAY: Objection. Lack of foundation.</p> <p>5 Beyond the scope of this witness.</p> <p>6 THE WITNESS: Yeah, I -- again, it's not</p> <p>7 something that I was involved with directly or</p> <p>8 indirectly. So I -- I can't comment on that.</p> <p>9 BY MR. FONTECILLA:</p> <p>10 Q. Now, and just to be clear, I'm asking you as</p> <p>11 a corporate designee of Safeway --</p> <p>12 A. Yeah.</p> <p>13 Q. -- as to issues that relate to -- to FMI</p> <p>14 interacting with Safeway or Safeway's involvement in</p> <p>15 FMI.</p> <p>16 MR. MURRAY: Objection. The -- the</p> <p>17 designation was just membership in those things. It</p> <p>18 had nothing specific about involvement in specific</p> <p>19 policy initiatives.</p> <p>20 You can answer, you can answer the question,</p> <p>21 if you know.</p> <p>22 THE WITNESS: I really -- I, you know,</p> <p>23 again, all this -- this related to 2000, this --</p> <p>24 this -- these formative stages of FMI's work and our</p> <p>25 involvement is beyond sort of where I was directly</p>

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Brian Dowling

April 11, 2014

45 (Pages 174 to 177)

<p style="text-align: right;">174</p> <p>1 involved in any of this, so this -- so I'm having 2 difficulty speaking to any of this I -- because I 3 don't know.</p> <p>4 BY MR. FONTECILLA:</p> <p>5 Q. Was Safeway -- did Safeway ever participate 6 in any meetings with egg producers in connection 7 with FMI's efforts to develop an industrywide animal 8 welfare program as described in this document?</p> <p>9 A. Not -- not to my knowledge.</p> <p>10 Q. And in the next section of this same page 11 titled "Program Goals" --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- the second sentence says -- well, the 14 first sentence says, "The food retail industry 15 understands that the issues surrounding the welfare 16 of animals used for food are important and 17 complicated."</p> <p>18 Would you agree that Safeway understands 19 that the issues surrounding the welfare of animals 20 are important and complicated?</p> <p>21 A. I would agree.</p> <p>22 Q. And Safeway understands that some of those 23 complicated and important aspects of the animal 24 welfare issues include a cost aspect; right?</p> <p>25 MR. MURRAY: Objection. Calls for</p>	<p style="text-align: right;">176</p> <p>1 I don't get involved in discussions, did not get 2 involved in discussions as it related to sort of 3 cost of commodities, and -- and, you know. So, 4 again, it's just -- it's not my area of expertise, 5 nor did I involve myself in these kinds -- those 6 kinds of discussions.</p> <p>7 BY MR. FONTECILLA:</p> <p>8 Q. And I appreciate that it's not your area of 9 expertise.</p> <p>10 A. Yeah.</p> <p>11 Q. And I'm just asking, were you ever made 12 aware that implementing animal welfare standards by 13 one of Safeway's egg suppliers would involve costs?</p> <p>14 MR. MURRAY: Objection to the form of the 15 question. It's been asked and answered. It's 16 beyond the scope of this witness' designation.</p> <p>17 THE WITNESS: Yeah. I -- I would repeat my 18 answer again. I -- you know, the issue may have 19 come up, but I'm not recalling, not to my knowledge, 20 and I -- but more importantly, it's -- it's not an 21 area that where I would have involved my -- myself 22 in -- in discussion or had anything to contribute.</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. Did Safeway ever learn through its 25 involvement in FMI that there would be economic</p>
<p style="text-align: right;">175</p> <p>1 speculation. Lack of foundation.</p> <p>2 THE WITNESS: Again, the whole area of cost 3 is not my area of expertise. I don't -- you know, I 4 can't -- I can't address that.</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. In -- in your involvement with Safeway's 7 consideration of potential animal welfare policies, 8 were you ever involved in discussions related to the 9 costs of implementing those animal welfare standards 10 by your suppliers?</p> <p>11 A. Not that I can immediately recall. There -- there may have been discussions about costs, but not that I can recall.</p> <p>12 Q. Would you agree that implementing certain 13 animal welfare standards encourage -- results in egg 14 supplier -- well, strike that.</p> <p>15 Would you agree that implementing certain 16 animal welfare standards by a supplier involves 17 certain costs?</p> <p>18 MR. MURRAY: Objection to the form of the 19 question. It's overly broad. It calls for 20 speculation. And it is beyond the scope of this 21 witness' designation.</p> <p>22 THE WITNESS: Again, I'm -- you know, it 23 just -- I -- I manage the public affairs function.</p>	<p style="text-align: right;">177</p> <p>1 implications of implementing certain animal welfare 2 standards by its egg suppliers?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. And if you could, turn to page 8 of this 5 exhibit, please. Do you see this press release on 6 page 8?</p> <p>7 A. I do.</p> <p>8 Q. Do you recognize it?</p> <p>9 A. I really don't. But let me -- let me just look at it again here. Yeah, a long time ago. 10 Gosh.</p> <p>11 MR. MURRAY: Read the whole thing.</p> <p>12 THE WITNESS: Yeah. I -- you know, I -- I 13 vaguely recall seeing this. I -- I do vaguely 14 recall seeing this and remember this generally.</p> <p>15 BY MR. FONTECILLA:</p> <p>16 Q. Did you review this press release prior to 17 it being issued?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. And what was the context in which you first 20 saw this document?</p> <p>21 A. Again --</p> <p>22 Q. Specifically this press release.</p> <p>23 A. Yeah, again, we're talking about 13 years ago. I -- I don't remember how I would have seen</p>

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Brian Dowling

April 11, 2014

46 (Pages 178 to 181)

<p style="text-align: right;">178</p> <p>1 it, whether or not it might have been sent to us by 2 FMI before it was published, I don't know. Maybe it 3 was. Maybe it wasn't. 4 Q. Did anyone at Safeway have any involvement 5 in reviewing or drafting the policy that is -- or 6 the press release that is listed in these two pages? 7 A. Not to my knowledge. Again, maybe, but not 8 to my knowledge. I just -- again, it would be 9 speculation on my part as to who was involved. 10 Q. Who at Safeway would have been in a position 11 where their role would have involved reviewing or 12 drafting a policy by FMI -- I'm sorry, a press 13 release by FMI? 14 MR. MURRAY: Objection to the form of the 15 question. Calls for speculation. Assumes facts 16 that have not been established. Lack of foundation. 17 You can answer. 18 THE WITNESS: Yeah. I'd be speculating, 19 but, I -- you know, perhaps, perhaps some of the 20 individuals we talked about earlier, you know, from 21 some of these documents. Perhaps Rich Calhoun, 22 perhaps -- I don't think Rory Frink, that wasn't his 23 thing. Perhaps Debra Lambert may have had some 24 input. I doubt it. Anyway... 25 (Exhibit 14 was marked for identification)</p>	<p style="text-align: right;">180</p> <p>1 with Karen about our, you know, interactions, our, 2 you know, PETA, you know, we -- we were getting 3 drawn into this, and I was -- had had conversations 4 with -- with Karen about, you know, FMI's 5 involvement with animal welfare. 6 Q. And did any of those conversations with 7 Miss Brown involve animal welfare as it applied 8 specifically to egg suppliers? 9 A. It was broadly about animal welfare overall 10 and interactions with -- with the activist 11 community, not -- not necessarily eggs. It may 12 have -- we may have talked about eggs. I can't 13 recall. 14 Q. And the fourth full paragraph of this fax, 15 letter sent to you -- 16 A. Uh-huh. 17 Q. -- indicates that, FMI is including 18 additional animal welfare experts into its advisory 19 group. 20 Do you see that? 21 A. I do. 22 Q. Do you recall FMI adding these animal 23 experts to its advisory group in or around August of 24 2001? 25 A. Not specifically in that timeframe. I do</p>
<p style="text-align: right;">179</p> <p>1 and attached hereto.) 2 BY MR. FONTICILLA: 3 Q. I'm handing you what's been marked as 4 Exhibit 14. For the record, this is a confidential 5 document Bates stamped FMI-001099. 6 A. Uh-huh. 7 Q. Do you recognize this document, Mr. Dowling? 8 A. I do, yeah. 9 Q. And this is a fax from FMI sent to various 10 representatives of retail members of FMI; correct? 11 A. Right. 12 Q. And you're listed as one of the 13 recipients -- 14 A. Yep. 15 Q. -- of this fax? 16 And this fax was sent to you on August 13, 17 2001; correct? 18 A. Yes. 19 Q. And do you remember receiving this -- 20 A. I do. I do. 21 Q. -- communication? 22 And why were you listed as a recipient of 23 this fax? 24 A. Because I think at that point, at that 25 point, I was engaged, I had communicated with --</p>	<p style="text-align: right;">181</p> <p>1 remember a conversation with -- with Karen about who 2 the team of scientists would be that would be, and I 3 remember we were talking about Temple, we were 4 talking about Janice and Joy generally. David 5 Fraser, British -- University of British Columbia, I 6 don't remember that. But I -- what I remember is 7 that we -- we got this team assembled to help us, 8 and -- and I generally recall Joy and Janice being 9 referenced there. 10 Q. Do you recall whether any of your 11 conversations with Miss Brown or others at FMI about 12 these animal welfare experts involved discussions 13 about whether those experts had been involved in 14 developing the Scientific Advisory Committee 15 recommendations to the UEP? 16 A. I don't -- I don't recall. 17 Q. And in this last paragraph of this letter 18 sent to you, it says, "We have begun our one-to-one 19 meetings with the producer groups." 20 Do you see that? 21 A. I do. 22 Q. Was Safeway aware in August of 2001, that 23 FMI was meeting with various producer groups? 24 A. You know, I -- I would be speculating, 25 perhaps some of our team were aware of that. I</p>

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Brian Dowling

April 11, 2014

47 (Pages 182 to 185)

<p style="text-align: right;">182</p> <p>1 think at that stage, I probably was just learning 2 of -- learning of that, you know.</p> <p>3 Q. In fact, in this letter, you are being 4 informed --</p> <p>5 A. Right --</p> <p>6 Q. -- of Safeway's meeting with producer 7 groups --</p> <p>8 A. -- right.</p> <p>9 Q. -- right?</p> <p>10 A. Yes. Sorry, talking over.</p> <p>11 Q. And in the first attachment, there is a 12 section about egg laying hen issues. 13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And when you received this attachment, what 16 was your understanding of the egg laying hen issues 17 as it's reflected in this document?</p> <p>18 A. Well, it was -- it was -- primarily, it 19 related, you know, to -- to space. I mean, that was 20 the -- that was sort of my first introduction to the 21 issue.</p> <p>22 Q. And what was the issue as you recall 23 understanding it at that time?</p> <p>24 A. As it was being raised by the activist, that 25 these egg laying hens, you know, were -- were</p>	<p style="text-align: right;">184</p> <p>1 MR. MURRAY: Object to the form of the 2 question.</p> <p>3 THE WITNESS: We -- we were trying to figure 4 out what to do as it related to animal welfare 5 issues broadly. That's what we were trying to do at 6 this stage.</p> <p>7 BY MR. FONTECILLA:</p> <p>8 Q. And if you turn to the... 9 We're going to set that -- that document 10 aside for now, Mr. Dowling.</p> <p>11 A. Okay.</p> <p>12 DEPOSITION REPORTER: Do you want to dial 13 him back in?</p> <p>14 MR. FONTECILLA: Well, he's on the phone. 15 MR. MURRAY: Oh, I thought you said he was 16 in.</p> <p>17 MR. FONTECILLA: He's in. He's on. 18 MR. MURRAY: You want to confirm? Is -- 19 MS. ADENDORFF: Krishna, are you on? 20 MR. NARINE: I'm on. 21 MR. MURRAY: Okay. 22 (Exhibit 15 was marked for identification 23 and attached hereto.)</p> <p>24 BY MR. FONTECILLA: 25 Q. I'm handing you, Mr. Dowling, what's been</p>
<p style="text-align: right;">183</p> <p>1 crammed into these battery cages and couldn't move 2 and couldn't do anything and that that -- that 3 needed to change.</p> <p>4 Q. And why did Safeway believe that it needed 5 to change?</p> <p>6 A. No, I'm saying that they --</p> <p>7 MR. MURRAY: Objection. Mischaracterizes 8 his testimony. 9 You can answer the question.</p> <p>10 THE WITNESS: The -- the activists were 11 saying there is a problem here, not -- not us.</p> <p>12 BY MR. FONTECILLA:</p> <p>13 Q. And why was FMI and the members listed here 14 in this fax discussing that issue?</p> <p>15 A. Because it was being -- because it was being 16 raised with us by the activist as an -- an animal 17 welfare issue.</p> <p>18 Q. And Safeway was considering the issues that 19 were raised by the activists.</p> <p>20 A. Right.</p> <p>21 MR. MURRAY: Objection to the form of the 22 question.</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. And it was considering adopting certain 25 policies that might appease the activists' concerns.</p>	<p style="text-align: right;">185</p> <p>1 marked as Exhibit 15.</p> <p>2 A. Uh-huh.</p> <p>3 Q. This is a highly confidential document Bates 4 stamped PETA 31.</p> <p>5 Mr. Dowling, this is a -- a letter from PETA 6 to Mr. Burd, the CEO of Safeway; right?</p> <p>7 A. Right.</p> <p>8 Q. And have you seen this document before?</p> <p>9 A. I have.</p> <p>10 Q. And when was the first time you saw this 11 document?</p> <p>12 A. On October -- well, whenever it arrived, in 13 October of 2001.</p> <p>14 Q. And in --</p> <p>15 A. At our -- when it arrived at our offices.</p> <p>16 Q. And did -- did Mr. Burd pass this document 17 along to you?</p> <p>18 A. His administrative assistant might -- 19 would -- probably would have sent it to me.</p> <p>20 Q. And what did Safeway do in response to 21 receiving this letter from PETA?</p> <p>22 A. Let me read it, read through it again here 23 just if you don't mind.</p> <p>24 You know, our -- our response, I think -- 25 the question is, what did we do? I think it was at</p>

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Brian Dowling

April 11, 2014

48 (Pages 186 to 189)

<p style="text-align: right;">186</p> <p>1 this stage that we -- we simply, you know -- I, in 2 particular, you know, tried -- I'm trying to recall 3 whether or not we even responded to it. I don't 4 think we responded to it. I might have had a phone 5 conversation with someone, maybe not. 6 Again, this is -- again, it's still early. 7 They say one year has passed since our first contact 8 with PETA, that's -- that's obviously true if 9 they -- you know, that -- that may be true. 10 But, you know, the issue, again, it was, you 11 know, it what, you know, PETA is upping the ante, 12 you know, and we were trying to figure out what to 13 do, you know, whether -- whether or not we wanted to 14 be responsive whether or not we -- you know, and, 15 you know -- and but at this stage, I think I'd had 16 conversations with Karen Brown at FMI. We were 17 trying to figure out how to position ourselves and 18 what we should be doing, whether or not there were 19 issues here, I think as it indicates here, that -- 20 that I'd stated that, you know -- you know, we've 21 got to -- you know, we should -- we must raise the 22 bar on animal welfare. 23 But it was pretty broad at this point and we 24 were still in sort of discussion stage as to where 25 we ought to go with this.</p>	<p style="text-align: right;">188</p> <p>1 THE WITNESS: Yeah, I -- you know, at this 2 stage, you know, we were still trying to sort of 3 figure out what we were going to do. We hadn't -- 4 we hadn't you know -- and, you know, we -- we -- you 5 know, there wasn't at this stage -- I mean, I was 6 sort of handling it, you know, there wasn't a lot 7 of, you know, discussion among the management team 8 about what do we do necessarily. But we were, you 9 know, we were looking at it. It was still in the 10 examination stage. 11 BY MR. FONTICILLA: 12 Q. And what were you examining specifically, if 13 anything, related as to egg laying hens as -- 14 A. I can't recall. I -- I can't recall. I 15 mean, I think it was the issue as it related to 16 cage -- you know, again, space, transportation, you 17 know, again, the debeaking issue, you know, all 18 these things that they're -- they're sort of raising 19 here. But, you know, again, I -- it was -- 20 Q. And when you say "they're raising here" -- 21 MR. MURRAY: Well, he wasn't -- were you 22 done? Are you done? 23 THE WITNESS: No, I'm -- I'm done. 24 BY MR. FONTICILLA: 25 Q. And when you say "they're raising here," are</p>
<p style="text-align: right;">187</p> <p>1 Q. And what were the options that Safeway and 2 FMI were considering with regards to responding to 3 PETA's letters? 4 MR. MURRAY: Objection. Compound. 5 BY MR. FONTICILLA: 6 Q. So starting with Safeway, what -- what were 7 the options that Safeway was considering with 8 regards to responding to PETA's letter in or around 9 this time period? 10 A. You know, I think at this stage, you know, 11 we were looking at the various issues they were 12 raising here, and trying to -- they raised, as you 13 can see, so much as it relates to dairy cows, you 14 know, veal calves. I mean, there were just a whole 15 host of issues here. 16 Q. And specifically as to eggs and the issues 17 that they raised regarding caged egg laying hens. 18 A. Right. 19 Q. What were the options that Safeway 20 considered with respect to responding to PETA as to 21 that specific animal welfare issue? 22 A. I -- 23 MR. MURRAY: Object to the form of the 24 question. It -- it assumes facts that have not been 25 established.</p>	<p style="text-align: right;">189</p> <p>1 you referring to the Addendum 1 -- 2 A. Right. 3 Q. -- of this exhibit -- 4 A. Right. 5 Q. -- where PETA says, "We are asking Safeway 6 to," and then it lists a few things that they're 7 demanding. 8 A. Yes. Right. 9 DEPOSITION REPORTER: I need one at a time, 10 I'm sorry. 11 MR. MURRAY: You're going to have to slow 12 down. 13 THE WITNESS: Sorry. 14 MR. MURRAY: The court reporter is not going 15 to make it through the day. 16 THE WITNESS: Sorry. Sorry. 17 BY MR. FONTICILLA: 18 Q. So PETA, in this attachment to the letter, 19 was asking certain things of Safeway; right? 20 A. Right. 21 Q. And those things related to animal welfare 22 issues; right? 23 A. Right. 24 Q. And one of them had to do with buying eggs 25 from suppliers of -- who supplied eggs using battery</p>

HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 cages; correct?</p> <p>2 A. Correct.</p> <p>3 Q. And that's that second point there where</p> <p>4 PETA is asking Safeway to cease buying eggs from</p> <p>5 suppliers that give hens less than 75 square inches</p> <p>6 of space per bird with the ultimate goal of phasing</p> <p>7 out battery cages all together.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And after receiving this letter, what</p> <p>11 specifically as to this issue was Safeway</p> <p>12 considering in regards to their response?</p> <p>13 A. Again --</p> <p>14 MR. MURRAY: Objection. It assumes facts</p> <p>15 that haven't been established.</p> <p>16 THE WITNESS: You know, again, it was -- it</p> <p>17 was a long time ago. I -- I can't specifically</p> <p>18 recall exactly on that particular issue what we were</p> <p>19 sort of weighing and considering.</p> <p>20 You know, PETA was coming at us with a</p> <p>21 boatload of issues, and, you know, we were trying to</p> <p>22 assess among all of these, you know, including the</p> <p>23 egg issue, what do we do, and what should be our</p> <p>24 position?</p> <p>25 And it was, you know, where we -- and -- but</p>	<p style="text-align: right;">192</p> <p>1 asking Safeway to cease buying eggs from suppliers</p> <p>2 that gave hens less than 75 square inches of space</p> <p>3 per bird is not true?</p> <p>4 A. No. They've -- they've asked -- yeah,</p> <p>5 they've asked us to cease, that's right.</p> <p>6 Q. And did Safeway consider as one of its</p> <p>7 options ignoring PETA's request?</p> <p>8 A. Yes. I mean, we -- we -- all along through</p> <p>9 here, you know, we -- do we ignore PETA? Do we</p> <p>10 engage with them? You know, do we take this</p> <p>11 seriously?</p> <p>12 Q. And what were the factors that Safeway</p> <p>13 considered in making that decision as to whether or</p> <p>14 not to ignore PETA?</p> <p>15 A. You know, I think the -- the principal</p> <p>16 factor is -- is it a real issue, is it a real animal</p> <p>17 welfare issue. Is it one that we need to, as a</p> <p>18 retail company that doesn't engage in egg</p> <p>19 manufacturing, is this something that we need to be</p> <p>20 in the middle of? Do we need to be responding to</p> <p>21 this particular issue or any of these other issues?</p> <p>22 It was -- it was that consideration, it was that</p> <p>23 factor.</p> <p>24 Q. And why would Safeway consider responding as</p> <p>25 a retailer to an issue that related to its</p>
<p style="text-align: right;">191</p> <p>1 we hadn't established anything. We weren't sitting</p> <p>2 weighing Option A or Option B. We were -- again, a</p> <p>3 long time ago, so my memory may, you know, sort of</p> <p>4 be failing me a little bit here, but...</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. But here, it's correct to say that PETA had</p> <p>7 asked Safeway in -- in October of 2001 to stop</p> <p>8 buying eggs from suppliers that gave hens less than</p> <p>9 75 square inches of space per bird; correct?</p> <p>10 A. I -- I think that's right.</p> <p>11 Q. I mean, it says that right there in the</p> <p>12 document that they sent you; right?</p> <p>13 A. Right. Yeah, but PETA's, at times, known</p> <p>14 for saying things that -- that are not correct,</p> <p>15 so...</p> <p>16 Q. Right. But they're -- and what -- what part</p> <p>17 of this would not be correct?</p> <p>18 A. Okay. Where are you again? I want to make</p> <p>19 sure --</p> <p>20 Q. I'm on the Addendum 1, point 2 where we were</p> <p>21 talking about --</p> <p>22 A. Yep. Right.</p> <p>23 Q. -- how Safeway was asking.</p> <p>24 A. Yep. Right.</p> <p>25 Q. So what part of point -- what part of PETA</p>	<p style="text-align: right;">193</p> <p>1 manufacturers?</p> <p>2 A. Largely because as a retailer, we've got</p> <p>3 direct, you know, interaction with our customers</p> <p>4 sometimes two, three days a week, we're the ones on</p> <p>5 the front lines. It's the PETAs of the world</p> <p>6 that -- that, you know, exert pressure on retailers</p> <p>7 more readily than they do on manufacturers. And so</p> <p>8 we were wanting to sort of understand how this would</p> <p>9 impact our business.</p> <p>10 I mean, this is broadly thinking about sort</p> <p>11 of the interaction with PETA and, you know, our</p> <p>12 company, our company's reputation, the standards we</p> <p>13 set for our manufacturers, there's a whole bunch of</p> <p>14 factors that -- that were sort of coming into play</p> <p>15 here. But, again, from my standpoint, it had to</p> <p>16 do -- that's -- that's -- those were the kinds of</p> <p>17 things that we were trying to sort of work our way</p> <p>18 through.</p> <p>19 (Exhibit 16 was marked for identification</p> <p>20 and attached hereto.)</p> <p>21 BY MR. FONTECILLA:</p> <p>22 Q. I'm handing what's been marked as</p> <p>23 Exhibit 16, Mr. Dowling. Why don't you take a</p> <p>24 minute to review that document.</p> <p>25 And for the record, this is a confidential</p>

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Brian Dowling

April 11, 2014

50 (Pages 194 to 197)

<p style="text-align: right;">194</p> <p>1 document Bates stamped FMI-001080. This is a letter 2 from FMI to various individuals, including yourself; 3 correct?</p> <p>4 A. Uh-huh. Yes.</p> <p>5 Q. And who are the individuals listed as 6 recipients of this FMI letter?</p> <p>7 A. These are largely communications executives 8 with these various companies.</p> <p>9 Q. And why are these individuals receiving this 10 communication from FMI?</p> <p>11 MR. MURRAY: Objection. Calls for 12 speculation.</p> <p>13 BY MR. FONTICILLA:</p> <p>14 Q. What was your understanding of why you 15 received this, this letter from FMI in November 16 26th, 2001?</p> <p>17 MR. MURRAY: Same objection. 18 (Cell phone interruption.)</p> <p>19 THE WITNESS: Sorry.</p> <p>20 You know, this is, you know, I -- I think 21 more than anything else, Karen doing what she says 22 in her "RE" line giving an update and alerting us 23 to, you know, her communication with PETA. I think 24 it's -- it's stated plainly in the -- in the memo 25 what it is.</p>	<p style="text-align: right;">196</p> <p>1 A. Correct. 2 Q. And it's an update to a conversation that 3 FMI and its members, including Safeway, have been 4 having about animal welfare issues; correct? 5 A. That is -- that is right, as far as I can 6 see, yes. 7 Q. And part of the conversation that FMI's 8 members were having with FMI at this time related to 9 animal welfare issues involved the pressure that 10 these retailers were receiving from PETA; right? 11 A. That is -- that is right. That was part of 12 it. 13 Q. And what were the other parts? 14 A. You know, the pressure is one thing. I 15 think -- I think it was all of these companies, 16 including Safeway, you know, were, again, looking to 17 sort of manage a broad range of issues, you know, 18 and you get -- but it's not just activists. It's 19 not just -- there are others that are, you know, 20 sort of weigh in here, you know, there are other... 21 But largely, you know, it was -- it was -- 22 yeah, it was -- it was some pressure that everybody 23 was feeling, you know, from the activist community. 24 They were being, you know, pretty effective in 25 exerting a level of pressure, you know, on the</p>
<p style="text-align: right;">195</p> <p>1 BY MR. FONTICILLA: 2 Q. And so she's giving an update because this 3 is a continuation of an ongoing discussion that 4 FMI's members have been having with Karen Brown over 5 at FMI about animal welfare issues; right? 6 A. Correct. 7 MR. MURRAY: Objection. 8 BY MR. FONTICILLA: 9 Q. And part of that is the pressure -- 10 A. Sorry. 11 Q. -- that these retailers are receiving from 12 PETA to adopt a host of animal welfare related 13 programs or standards; right? 14 MR. MURRAY: Objection to the form of the 15 question. It mischaracterizes the document. 16 You can answer. 17 BY MR. FONTICILLA: 18 Q. And I'm not talking about the document. I'm 19 talking about how the ongoing conversation that this 20 is part of relates to animal welfare issues; right? 21 MR. MURRAY: This is the document? 22 Objection to the form of the question. It's 23 vague and ambiguous. 24 BY MR. FONTICILLA: 25 Q. This document is an update; right?</p>	<p style="text-align: right;">197</p> <p>1 industry. 2 Q. And as we saw on the last Exhibit 16, part 3 of that pressure involved asking Safeway 4 specifically to adopt certain standards about its 5 egg suppliers; right? 6 A. That's right. 7 Q. And here you see that Miss Brown is updating 8 retailers that The United Egg Producers have been 9 working on a consumer brochure about their 10 industry's animal welfare program. 11 Do you see that? 12 A. I do. 13 Q. And she's soliciting input from Safeway 14 whether it thinks that this type of consumer 15 information might be helpful; correct? 16 MR. MURRAY: Objection to the form of the 17 question. It mischaracterizes the document. 18 THE WITNESS: I see that it is, you know, 19 that's -- that's what she's asking for. 20 BY MR. FONTICILLA: 21 Q. Right. At this -- 22 A. Is input. Right. 23 Q. At this time she asked you -- 24 A. Is it helpful. Right. 25 Q. So at this time, she asked you for your</p>

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Brian Dowling

April 11, 2014

51 (Pages 198 to 201)

<p style="text-align: right;">198</p> <p>1 input about whether the UEP's consumer brochure 2 would be helpful to Safeway; correct? 3 MR. MURRAY: Objection. Mischaracterizes 4 the document. 5 THE WITNESS: That's -- that's clearly part 6 of it. 7 BY MR. FONTECILLA: 8 Q. And do you recall receiving that consumer 9 brochure? 10 A. I -- I frankly don't. I probably did, but I 11 don't remember what it looked like and you might 12 have it there. 13 (Exhibit 17 was marked for identification 14 and attached hereto.) 15 BY MR. FONTECILLA: 16 Q. I'm going to hand you what's been marked as 17 Exhibit 17. 18 A. Okay. 19 Q. And I've handed you what's been marked as 20 Exhibit 17. Do you understand that to be a copy of 21 the consumer brochure that was sent to you by FMI as 22 reflected in Exhibit 16? 23 A. Yes. 24 Q. And does reviewing this document today 25 reflect your recollection about whether you reviewed</p>	<p style="text-align: right;">200</p> <p>1 Q. And there is a website called 2 uepcertified.com; right? 3 A. Yes. 4 Q. Right under the symbol? 5 A. Yes. Right. 6 Q. And what was your understanding of what 7 United Egg Producer's Certified was when you 8 received the consumer brochure that's referenced in 9 Exhibit 16? 10 A. Again, how many years ago? The -- but my -- 11 my vague -- 12 MR. MURRAY: I object to the form of the 13 question. 14 MR. FONTECILLA: Please don't interrupt the 15 witness when he's answering. 16 MR. MURRAY: I -- he answered before I could 17 get my objection. I'm making an objection that 18 these two documents, there's an inconsistency 19 between these two documents and the dates. 20 So he can go ahead and answer to the extent 21 he knows. 22 MR. FONTECILLA: And, Counsel, it's improper 23 objections. 24 MR. MURRAY: Counsel, you -- it mis- -- your 25 question mischaracterizes the documents.</p>
<p style="text-align: right;">199</p> <p>1 that consumer brochure in or around November of 2 2001? 3 A. Yeah, I -- yes, I -- now that I see it 4 again, I would have looked at it. 5 Q. And in the first page of the consumer 6 brochure, there is a kind of a symbol with a 7 checkmark; right? 8 A. Yes. 9 Q. And that -- around it, it says, United Egg 10 Producers Certified; right? 11 A. Uh-huh. 12 Q. And -- 13 A. Yes. 14 Q. Have you seen that -- 15 MR. MURRAY: I'm going to object to this 16 document. The -- the letter is dated November 26, 17 2001, and the first line of this brochure has a date 18 of 2002. 19 BY MR. FONTECILLA: 20 Q. Mr. Dowling, this first page has a symbol 21 with a checkmark as we discussed. What is your 22 understanding -- what was your understanding at the 23 time in November of 2001 of this symbol? Had you 24 ever seen it before? 25 A. I had not at that stage not seen it.</p>	<p style="text-align: right;">201</p> <p>1 MR. FONTECILLA: I did not characterize the 2 document -- mischaracterize the documents. For the 3 record, I asked the witness whether he understood 4 this exhibit to be an accurate representation of the 5 brochure that he had received in 2001, as he 6 testified, and he testified that that -- it was. So 7 I'm asking him a separate line of questions about 8 this brochure here. 9 BY MR. FONTECILLA: 10 Q. Mr. Dowling -- 11 MR. MURRAY: Well, my objection is renewed. 12 BY MR. FONTECILLA: 13 Q. -- you were -- you were answering a question 14 that I asked, which was: What was your 15 understanding of the United Egg Producers Certified 16 program as it is described on the second page of 17 Exhibit 17 when you received this brochure in 2001? 18 MR. MURRAY: Objection. 19 THE WITNESS: My recollection was that it 20 was a symbol of certification of the humane 21 treatment of egg laying hens and that -- that that 22 was -- that was what I understood the symbol to -- 23 to mean. 24 BY MR. FONTECILLA: 25 Q. And had you had any involvement with the</p>

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Brian Dowling

April 11, 2014

52 (Pages 202 to 205)

<p style="text-align: right;">202</p> <p>1 United Egg Producers Certified program in or around 2 November of 2001 at that time?</p> <p>3 A. I -- no.</p> <p>4 Q. And did you have any understanding at that 5 time of what the United Egg Producers Certified 6 program was?</p> <p>7 A. No.</p> <p>8 Q. What was --</p> <p>9 A. This -- this was -- at this stage, this 10 was -- was to me -- generally new to me.</p> <p>11 Q. And I'm asking, what was Safeway's 12 understanding at this time of what the United Egg 13 Producers Certified program was?</p> <p>14 A. I think that would be, again, a question 15 better addressed to folks who were managing that 16 side of our business.</p> <p>17 Q. The QA side?</p> <p>18 A. Right.</p> <p>19 Q. And when you received this brochure, did you 20 review it as Miss Brown had asked you to in 21 Exhibit 16?</p> <p>22 MR. MURRAY: Objection to the form of the 23 question.</p> <p>24 THE WITNESS: My recollection was that I -- 25 I looked at it, but that was about all -- that's</p>	<p style="text-align: right;">204</p> <p>1 confidential document Bates stamped PETA 20. 2 Mr. Dowling, this is a letter that PETA sent 3 you on February 13th, 2002; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall receiving this letter from 6 PETA?</p> <p>7 A. I do.</p> <p>8 Q. And what was the context surrounding this 9 letter?</p> <p>10 A. You know, my recollection was that at this 11 point, I had had some phone interaction with Bruce 12 Friedrich.</p> <p>13 Q. And who is Bruce Friedrich?</p> <p>14 A. He represented PETA. He was their senior 15 campaign coordinator.</p> <p>16 Q. And what your inter- -- what was the 17 substance of your interaction with Mr. Friedrich 18 around this time?</p> <p>19 A. Again, a long, long time ago, so I'm -- I'm 20 just sort of, you know -- but Friedrich was -- was, 21 you know, wanting Safeway to -- to take action, you 22 know.</p> <p>23 Q. And -- sorry. I didn't mean to cut you off.</p> <p>24 A. That -- that was it.</p> <p>25 Q. And in the first paragraph of his letter --</p>
<p style="text-align: right;">203</p> <p>1 about as much as I can remember.</p> <p>2 BY MR. FONTECILLA:</p> <p>3 Q. And did Safeway provide input to FMI as to 4 whether this brochure would be helpful to its 5 customers?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did Safeway distribute this brochure to its 8 customers?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Did Safeway do anything else other than 11 reviewing this brochure -- with this brochure?</p> <p>12 A. You know, we -- we may have, I -- but I 13 don't know what we would have otherwise done with 14 it.</p> <p>15 (Exhibit 18 was marked for identification 16 and attached hereto.)</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. I'm handing you what's been marked as 19 Exhibit 18. Go ahead and take a minute to review 20 that document, please.</p> <p>21 DEPOSITION REPORTER: Do you want to 22 describe it?</p> <p>23 MR. FONTECILLA: Yes.</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. This document, for the record, is a highly</p>	<p style="text-align: right;">205</p> <p>1 oh, I'm sorry. And the second page of this letter, 2 he actually copies a couple of other folks; right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. So he sent the same letter to Safeway's CEO 5 at the time, Mr. Burd; correct?</p> <p>6 A. Yep.</p> <p>7 Q. And he sent it to Miss Brown at FMI; 8 correct?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And also Dr. Grandin --</p> <p>11 MR. MURRAY: You need to say "yes" or "no."</p> <p>12 THE WITNESS: Yes. Sorry.</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. And also Dr. Grandin; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And in the first paragraph of the letter, 17 PETA references a campaign that it has launched 18 against Safeway the previous week; right?</p> <p>19 A. Uh-huh. Yes.</p> <p>20 Q. And was that the Shameway campaign that we 21 talked about earlier?</p> <p>22 MR. MURRAY: Objection. Calls for 23 speculation.</p> <p>24 THE WITNESS: I believe it was.</p> <p>25 ///</p>

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Brian Dowling

April 11, 2014

53 (Pages 206 to 209)

<p style="text-align: right;">206</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Were there any other campaigns that PETA 3 launched against Safeway in or around February of 4 2002?</p> <p>5 A. I'd have to think back, but there may have 6 been, you know, things that -- that PETA did at in 7 and around some of our facilities. I can't recall 8 where they would have conducted some small 9 demonstrations or whatever. But -- but otherwise, I 10 think it was largely the, sort of the Shameway 11 activity.</p> <p>12 Q. And some of that Shameway activity related 13 to the animal welfare standards that Safeway's egg 14 suppliers had in place; correct?</p> <p>15 A. That's right.</p> <p>16 Q. And in this first page of this document, 17 there is a paragraph after the first bullet point 18 where it says, "Your long relationship with your 19 suppliers is all the more reason for you to use that 20 relationship to decrease animal abuse. Your 21 suppliers don't want to lose your business; you have 22 the power."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Do you agree with those statements?</p>	<p style="text-align: right;">208</p> <p>1 Mr. Friedrich's communication and that's -- 2 that's -- that was also part of my sort of overall 3 objection to that particular paragraph.</p> <p>4 Q. Is it Safeway's understanding that its egg 5 suppliers would comply with any requirements for 6 animal welfare issues that Safeway required of the 7 suppliers in order to get Safeway's business?</p> <p>8 MR. MURRAY: Object to the form of the 9 question. Calls for speculation. Beyond the scope 10 of this witness' designation.</p> <p>11 THE WITNESS: Yeah. If you could ask the 12 question again, if you don't...</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. Sure. Is it Safeway's understanding that if 15 Safeway required animal welfare standards in order 16 to qualify for its business, that egg suppliers who 17 wanted Safeway's business would comply with those 18 standards?</p> <p>19 MR. MURRAY: Same objection.</p> <p>20 THE WITNESS: Yeah. That's not -- that's 21 not -- I mean, again, part of -- again, you're -- 22 you're asking me a question as it relates to, you 23 know, our relationship with suppliers where my role 24 didn't sort of transfer to our interaction with 25 suppliers, and so I -- I'm not in a position to --</p>
<p style="text-align: right;">207</p> <p>1 MR. MURRAY: Object to the form of the 2 question. Calls for speculation.</p> <p>3 THE WITNESS: I don't, I don't agree with 4 that statement.</p> <p>5 BY MR. FONTECILLA:</p> <p>6 Q. What part of these statements don't you 7 agree with?</p> <p>8 A. You know, I think it's the -- the 9 implication of Mr. Friedrich's statement that we -- 10 that we, you know, should be using these 11 relationships to, you know, and that we have -- as 12 is often the case with a lot of these activist 13 groups, they, you know, use your power, your market 14 power, whatever it might be, your influence to tell 15 suppliers to do X when, in fact, that's not how we 16 do business.</p> <p>17 And that -- it's -- it's the tone, it's the 18 implication that, you know, we've got this -- this 19 group of suppliers sitting out there by their 20 fingernails who don't want to lose our business, you 21 know, because of our power and that we're exerting 22 this power in the marketplace. It's just not the 23 way we, you know, the way we roll. It never has 24 been as a company.</p> <p>25 And this is fairly typical of</p>	<p style="text-align: right;">209</p> <p>1 to comment on that.</p> <p>2 BY MR. FONTECILLA:</p> <p>3 Q. Do you have any understanding of why PETA is 4 asking you to influence your suppliers' animal 5 welfare practices?</p> <p>6 A. Yeah, I think -- I think PETA was doing 7 what -- what it -- what it's typically doing at this 8 stage. That was, you know, trying to get the 9 retailer, not just Safeway, to exert influence on 10 the supplier community, not just on egg issues, but 11 other issues as well.</p> <p>12 Q. And do you recall what Safeway's response 13 was to receiving this letter from PETA in or around 14 February of 2002?</p> <p>15 A. I think at this stage, because he references 16 it here, I think this is where -- you know, where 17 Steve Gross has stepped in, I think. I can't 18 recall. We didn't respond in writing, to the best 19 of my recollection.</p> <p>20 Q. Did you have any conversations with 21 Mr. Friedrich or Mr. Gross as a result or in 22 response to this letter?</p> <p>23 A. Not immediately. I don't recall -- in fact, 24 I don't recall that I even had -- I'd have to -- 25 again, I'd -- I may have had a conversation with</p>

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Brian Dowling

April 11, 2014

54 (Pages 210 to 213)

<p style="text-align: right;">210</p> <p>1 Steve Gross. At -- at this point, you know, our -- 2 our interaction with -- we were -- we were, you 3 know, of the view that less is more with Friedrich, 4 and he -- just his comments and his approach was so 5 inflammatory that we kind of about had enough of 6 him, and I think they sensed that, and that's why I 7 think Gross was sort of being recruited in here to, 8 you know, intercede.</p> <p>9 Q. And did you have any conversations with 10 Mr. Burd regarding this letter after receiving it?</p> <p>11 A. Not that I recall.</p> <p>12 Q. And after receiving this letter, Safeway 13 reacted by trying to muster support of other 14 retailers to adopt an industrywide response to PETA; 15 right?</p> <p>16 MR. MURRAY: Objection to the form of the 17 question.</p> <p>18 THE WITNESS: You know, at -- at this stage, 19 I think following this letter, I would have had a 20 conversation with Karen Brown at some point after 21 February --</p> <p>22 BY MR. FONTECILLA:</p> <p>23 Q. And --</p> <p>24 A. -- to -- to talk with her further about an 25 industry response to some of this sort of activity,</p>	<p style="text-align: right;">212</p> <p>1 understand and to sort of have some discussion 2 about, you know, their interaction with PETA, you 3 know, and that -- that was it.</p> <p>4 BY MR. FONTECILLA:</p> <p>5 Q. And Safeway, in response to this letter, 6 also reached out to other retailers; right?</p> <p>7 A. Not that I recall. I -- I just -- I just 8 don't remember specifically whether or not I had any 9 conversations with anybody else about this at 10 another retailer. I -- maybe, maybe I did, but...</p> <p>11 Q. In fact, Safeway reached out to Kroger's to 12 ask for its help in developing an industrywide 13 response that would involve both Kroger's and 14 Safeway; right?</p> <p>15 A. I hope you can show -- if you're going to 16 show me a document that --</p> <p>17 Q. I'm just asking your recollection.</p> <p>18 A. You know --</p> <p>19 MR. MURRAY: Asked and answered. Objection.</p> <p>20 THE WITNESS: Yeah, I -- I'd have to think 21 back. I don't -- I don't recall. 22 (Exhibit 19 was marked for identification 23 and attached hereto.)</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. I'm handing you what's been marked as</p>
<p style="text-align: right;">211</p> <p>1 and rather than us on or around at this -- at this 2 particular stage.</p> <p>3 Q. And that's because it's important to Safeway 4 to have industrywide response to these animal 5 welfare issues; correct?</p> <p>6 MR. MURRAY: Objection to the form of the 7 question. It's vague.</p> <p>8 THE WITNESS: If you could, ask the question 9 again. I'm sorry.</p> <p>10 BY MR. FONTECILLA:</p> <p>11 Q. Sure. You said you reached out to Karen 12 Brown to see what it would -- what an industrywide 13 response would be; right?</p> <p>14 A. Correct.</p> <p>15 Q. And you reached out to Miss Brown at FMI, 16 so -- or excuse me. Strike that.</p> <p>17 And you reached out to Miss Brown at FMI 18 because it's important for Safeway to participate in 19 an industrywide response to the messages that PETA 20 is sending its retailers; right?</p> <p>21 MR. MURRAY: Objection to the form of the 22 question. It's vague and ambiguous.</p> <p>23 THE WITNESS: I -- I think -- I think the -- 24 the reaching out to -- to Karen Brown was to 25 understand sort of where they were, you know,</p>	<p style="text-align: right;">213</p> <p>1 Exhibit 19, Mr. Dowling.</p> <p>2 A. Here you go.</p> <p>3 Q. For the record, this is a confidential 4 document Bates stamped FMI-002427.</p> <p>5 This is an email exchange in which you were 6 involved in with someone named Lynn at Kroger's; 7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. And do you recall this email exchange?</p> <p>10 A. I -- let me just read -- read the back, back 11 end of it. Yeah, I do -- I do remember this 12 exchange, yes.</p> <p>13 Q. And this exchange took place, the first 14 email in this Exhibit 19, it's on the second page, 15 is dated February 14th; correct, of 2002?</p> <p>16 A. Uh-huh. The day after.</p> <p>17 Q. The day -- and you're referring to the day 18 after the letter that's in Exhibit 18; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And this is an email that was sent to 21 Safeway from Karen Brown, "Subject: Animal Welfare 22 Update"; correct?</p> <p>23 A. Uh-huh. Yes.</p> <p>24 Q. And in it she states, the last paragraph, 25 "We anticipate that the activist community will</p>

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Brian Dowling

April 11, 2014

55 (Pages 214 to 217)

<p style="text-align: right;">214</p> <p>1 continue to turn up the volume."</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And she asks for comments and feedback on</p> <p>5 what she describes as a draft interim report on</p> <p>6 FMI's animal welfare program; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And this is part of the effort that FMI was</p> <p>9 undertaking in or around this time to design an</p> <p>10 industrywide animal welfare standard; right?</p> <p>11 MR. MURRAY: Objection to the form of the</p> <p>12 question.</p> <p>13 BY MR. FONTICILLA:</p> <p>14 Q. I'm sorry. An industrywide animal welfare</p> <p>15 program or policy; correct?</p> <p>16 A. That is -- that is true, yes, that's</p> <p>17 accurate.</p> <p>18 Q. And part of that involved an industrywide</p> <p>19 animal welfare program as it related to standards</p> <p>20 for egg suppliers to retailers; correct?</p> <p>21 MR. MURRAY: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: That's -- I -- I think that's</p> <p>24 correct, but I -- I would have to think harder.</p> <p>25 ///</p>	<p style="text-align: right;">216</p> <p>1 MR. MURRAY: Same objections.</p> <p>2 THE WITNESS: Again, a long time ago, but my</p> <p>3 recollection was that -- that we had concerns about</p> <p>4 the -- sort of the speed that -- again, you have the</p> <p>5 retailers getting pressure, Safeway specifically,</p> <p>6 and that it would have, you know, as you can -- you</p> <p>7 can read through the email here.</p> <p>8 In our view at the time, and Lynn was in</p> <p>9 agreement with me, I don't know about Ertharin, who</p> <p>10 was with Albertson's, as I recall, that FMI was</p> <p>11 moving a little and was -- it was a little slow in</p> <p>12 response to some of this activity, and that was, you</p> <p>13 know, and -- and that the strength of the activity</p> <p>14 and their -- their approach was we -- we needed</p> <p>15 something more from them. I mean, it's apparent</p> <p>16 here from what -- what I indicate.</p> <p>17 BY MR. FONTICILLA:</p> <p>18 Q. Right. We saw earlier in documents that the</p> <p>19 FMI board-approved policy was adopted in --</p> <p>20 A. Right.</p> <p>21 Q. -- January of 2001; right?</p> <p>22 A. Right.</p> <p>23 Q. And that's what's being referred to as</p> <p>24 having started the joint process over a year ago in</p> <p>25 this particular email here in Exhibit 19; correct?</p>
<p style="text-align: right;">215</p> <p>1 BY MR. FONTICILLA:</p> <p>2 Q. And go ahead and think if you --</p> <p>3 A. No. I -- I think there was -- the eggs was</p> <p>4 involved, yes. Eggs were involved.</p> <p>5 Q. And the next email is an email forwarded to</p> <p>6 you and some other folks from Imarmer@kroger.com.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Who is Imarmer@kroger.com?</p> <p>10 A. Lynn Marmer manages public affairs for</p> <p>11 Kroger.</p> <p>12 Q. And in it she says, "I would like to urge</p> <p>13 FMI to move more quickly."</p> <p>14 Do you see that in her email?</p> <p>15 A. I do.</p> <p>16 Q. Why was she asking, or why was she sending</p> <p>17 you this email?</p> <p>18 MR. MURRAY: Objection. Calls for</p> <p>19 speculation.</p> <p>20 BY MR. FONTICILLA:</p> <p>21 Q. Let me rephrase. What's your understanding</p> <p>22 at this time period of February of 2002, as to why</p> <p>23 she is engaging you and others in a separate</p> <p>24 discussion about the email that you have received</p> <p>25 from Miss Brown?</p>	<p style="text-align: right;">217</p> <p>1 MR. MURRAY: Objection. Calls for</p> <p>2 speculation. Lack of foundation.</p> <p>3 THE WITNESS: That appears to be.</p> <p>4 BY MR. FONTICILLA:</p> <p>5 Q. And Safeway and Kroger are frustrated that</p> <p>6 there hasn't been progress in adopting an</p> <p>7 industrywide animal welfare program to address the</p> <p>8 activist community's concerns; correct?</p> <p>9 MR. MURRAY: Object to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: That -- that is largely</p> <p>12 accurate. I mean, that we were -- yes.</p> <p>13 BY MR. FONTICILLA:</p> <p>14 Q. And Safeway was hoping to speed up the</p> <p>15 process at this point because it was now receiving</p> <p>16 direct pressure from PETA; correct?</p> <p>17 A. That is largely correct, yes. You know, I</p> <p>18 think -- I think part of the issue, too, was the --</p> <p>19 the -- and this is, again, my -- my sort of</p> <p>20 recollection of it from a long time ago was that</p> <p>21 the -- the FMI report, the FMI policy statement,</p> <p>22 wasn't getting a great deal of sort of play. It --</p> <p>23 it was -- it was a policy statement. It -- but</p> <p>24 it -- but as far as, you know, the activists were</p> <p>25 concerned, as far as the general public was</p>

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Brian Dowling

April 11, 2014

56 (Pages 218 to 221)

<p style="text-align: right;">218</p> <p>1 concerned, there wasn't a lot of visibility as it 2 relates to that, our customer base. And so it 3 was -- it was us wanting FMI to be more proactive 4 and more visible on -- sort of on the issue.</p> <p>5 Q. And Safeway and Kroger's wanted FMI to -- to 6 recommend a standard that the retailers could adopt 7 in order to have more play, as you say; right?</p> <p>8 A. Yeah. Generally, that's -- that's my 9 recollection of this. I think -- I think it more 10 broadly was that -- that FMI's efforts were so under 11 the radar that -- that the retailers were -- were 12 getting all the pressure. That -- that FMI, in 13 spite of good efforts, you know, it was -- it was so 14 low key and quiet that we wanted a little more from 15 it.</p> <p>16 Q. And a statement directly released by a 17 retailer adopting particular animal welfare 18 standards would have been a little bit higher above 19 the radar; right?</p> <p>20 MR. MURRAY: Object to the form of the 21 question. Calls for speculation.</p> <p>22 THE WITNESS: Yeah, I'd -- I'd be 23 speculating.</p> <p>24 BY MR. FONTICILLA:</p> <p>25 Q. Well, when you say that their -- FMI efforts</p>	<p style="text-align: right;">220</p> <p>1 Q. And what did Safeway and Kroger's say to 2 Miss Brown or FMI in order to -- to have FMI push a 3 little faster on the adoption of an industrywide 4 program?</p> <p>5 MR. MURRAY: Objection. Compound.</p> <p>6 THE WITNESS: Yeah, I -- I can't speak for 7 what Lynn communicated to FMI. I think it's right 8 here. It's other than what's here.</p> <p>9 BY MR. FONTICILLA:</p> <p>10 Q. So that's a good point. Let me ask: What 11 did -- what did Safeway do to, I guess, push or urge 12 FMI to move more quickly as it's described in this 13 document?</p> <p>14 A. My recollection of my conversation with 15 Karen, and Karen wasn't very happy with me, was 16 that -- that we're doing all that we should be 17 doing, all that we can do. We're dealing with 18 academics from various institutions. It's hard to 19 pull them all together. It's -- it's -- we're doing 20 the best we can. We've done a lot already, you 21 know, kind of, what else do you want us to do here? 22 We understand you're under pressure, you know, but, 23 you know. That was largely sort of the way the 24 conversation went.</p> <p>25 Q. And do you recall anything else specifically</p>
<p style="text-align: right;">219</p> <p>1 were a little bit below the radar, what were some of 2 the options that Safeway was considering in order to 3 have the issue get more play, as you testified 4 earlier?</p> <p>5 A. FMI give it greater play, greater 6 visibility.</p> <p>7 Q. And how did Safeway endeavor to do that?</p> <p>8 MR. MURRAY: Objection to the form of the 9 question.</p> <p>10 THE WITNESS: Ask the question again, 11 please.</p> <p>12 BY MR. FONTICILLA:</p> <p>13 Q. Sure. And what did Safeway do in order to 14 further that goal?</p> <p>15 A. I remember having a conversation with -- 16 with Karen Brown about it. There was, in -- in my 17 view, and I think obviously Lynn was in agreement, 18 the pace of activity with FMI was a little, for our 19 taste a little too measured, a little too -- and 20 that while -- while in -- at the same time, you 21 know, Safeway's getting -- getting clobbered by 22 these activist groups, and, you know, we were trying 23 to...</p> <p>24 Q. And what was the --</p> <p>25 A. So...</p>	<p style="text-align: right;">221</p> <p>1 that you told Miss Brown in regards to FMI's efforts 2 to move more quickly on the adopt -- on the 3 adoption -- excuse me -- of an industrywide standard 4 as it related to animal welfare issues?</p> <p>5 A. Beyond what I just told you, I don't recall 6 anything more.</p> <p>7 I suspect you're going to help me with that. 8 (Exhibit 20 was marked for identification 9 and attached hereto.)</p> <p>10 BY MR. FONTICILLA:</p> <p>11 Q. I'm going to hand you what's been marked as 12 Exhibit 20. And go ahead and take a minute to 13 review that document.</p> <p>14 A. Okay. Yeah.</p> <p>15 Q. And you recognize this document; correct?</p> <p>16 A. I do.</p> <p>17 Q. This is a letter that you received from PETA 18 on March 14th, 2002; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And it's another letter from Mr. Friedrich 21 at PETA?</p> <p>22 A. Yes.</p> <p>23 Q. And he copies Safeway's CEO, Mr. Burd, as 24 well as Miss Brown at FMI, and Dr. Grandin; correct?</p> <p>25 A. Correct.</p>

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Brian Dowling

April 11, 2014

57 (Pages 222 to 225)

<p style="text-align: right;">222</p> <p>1 Q. And this letter is sent to you roughly about 2 a month after the last letter; correct? 3 A. That's correct. 4 Q. And in the letter, PETA informs you that 5 they've been monitoring Safeway's remarks about the 6 animal welfare issues that PETA raised in its last 7 letter; correct? 8 A. Yes. 9 Q. And PETA states that "We continue to hope 10 that this campaign will be short lived." 11 Right? 12 A. Yes. 13 Q. And they're referring to the Shameway 14 campaign that PETA launched in or about February of 15 2002 against Safeway; right? 16 A. That's correct. 17 Q. And do you recall the context surrounding 18 this letter that occurred about a month after the 19 last one? 20 A. Do I recall the context of it other than receiving it? Why we received it? Is that what you're asking? 21 Q. Yes. 22 A. I think it was -- as I best recall it, it was, you know, it was, you know, yet another the</p>	<p style="text-align: right;">224</p> <p>1 A. Correct. 2 Q. And what was Safeway's response to receiving 3 this letter from PETA again raising issues related 4 to the animal welfare practices as they related to 5 caged egg laying hens? 6 A. I don't recall that we responded at all. 7 Q. And was it Safeway's understanding from this 8 letter that PETA was asking Safeway to adopt certain 9 practices in order to end the Shameway campaign? 10 A. At this stage, I don't recall that -- that they were specifically asking for -- for the following two or three or four things from us. It was -- it was -- it was vague. It was more sort of the accusation that -- 11 (Cell phone interruption.) 12 THE WITNESS: I apologize for this. 13 It was -- it was -- it wasn't -- my 14 recollection was that it wasn't a specific set of, 15 you know, at this stage, the -- the earlier 16 communication from Sean Gifford laid out, you know, 17 a whole raft of, you know, requests here. 18 Friedrich's, you know, interaction was -- 19 was different because I do recall at one point us, 20 and I'm trying to recall whether or not it was with 21 Friedrich as we approached our May meeting where</p>
<p style="text-align: right;">223</p> <p>1 Bruce Friedrich like, you know, volley and to exert further pressure. I -- I -- and that was -- that was -- that was it, I think. 2 Q. And in his letter, he references certain 3 statements that -- that you've been making in the 4 last month regarding the animal welfare topics that 5 have been discussed between PETA and Safeway; 6 correct? 7 A. Yes. 8 Q. And why were -- had you been making 9 statements for the last month regarding animal 10 welfare issues? 11 A. Well, I mean, again, I'd have to look back at what -- what I -- but, you know, I -- over that last month, you know, we would periodically get calls from various publications asking us about the issue, and I was obviously responding and that's what, you know -- and -- and as they sort of ratcheted up their campaign, we'd periodically get some calls, you know. I reference some of the publications here. 12 Q. And in his letter, Mr. Friedrich 13 specifically references some of the animal welfare 14 practices as they relate to caged egg laying hens; 15 correct?</p>	<p style="text-align: right;">225</p> <p>1 they were threatening to come to our shareholder 2 meeting where we sort of said, what is it 3 specifically that you would -- you make all kinds of 4 accusations here, Mr. Friedrich, yet, you know, it's 5 not really clear what you'd like from us. 6 You -- there was an earlier letter -- I 7 mean, I'm just sort of trying to piece together sort 8 of how this all sort of developed. But here, 9 there -- there wasn't a specific ask, there wasn't a 10 specific request. They eventually got around to 11 that. 12 BY MR. FONTECILLA: 13 Q. But in the previous letter they sent, they 14 actually had that addendum -- 15 A. Yeah. Right. 16 Q. -- they had that second bullet point we 17 talked about, a specific request as to the size -- 18 A. Right. 19 Q. -- of the cages for Safeway's egg suppliers; 20 right? 21 A. That's right. But that was one of how many? 22 Q. Right. But it was the only one -- 23 MR. MURRAY: Were you done? 24 THE WITNESS: I was done, yes. 25 / / /</p>

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Brian Dowling

April 11, 2014

58 (Pages 226 to 229)

<p style="text-align: right;">226</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. It was the only one in their request that 3 had to do specifically with the cage space 4 requirements for egg laying hens; right? And you 5 can go back and read the --</p> <p>6 A. No, no. Yeah. No, I just looked at this. 7 Yeah, but it -- but it was -- the problem we had 8 with this and that I had with this at the time was 9 that there was just this -- this -- this, you know, 10 three or four pages of -- of demands and we were 11 sort of -- our corporate head was swimming as to 12 sort of how we should be addressing some of this 13 stuff. Should we pitch it? Should we respond? Are 14 these legitimate concerns? Should we, what should 15 we, and it was -- it was this, this fuselage that we 16 were attempting to sort of deal with and -- and, you 17 know, this raft of accusations of lying and 18 misrepresenting the truth that -- that made it 19 difficult for us to sort of make a judgment, you 20 know, about -- broadly about some of this activity.</p> <p>21 Q. And in this letter, on the second page, they 22 quote a statement from you made to the press -- 23 actually, they quote a few; right?</p> <p>24 A. Yes. Right.</p> <p>25 Q. And the third one down on the second, on the</p>	<p style="text-align: right;">228</p> <p>1 A. I did not.</p> <p>2 Q. And what did you do after receiving this 3 letter?</p> <p>4 A. You know, a long time ago. Again, 12 years 5 ago. I don't -- you know, I might have -- again, I 6 might have had a conversation at some point with 7 Friedrich. I -- I doubt it. I think, you know -- 8 please call me at -- you know, we -- we -- you know, 9 again, I -- it's -- it's just difficult to recall, 10 but I may have talked to him briefly about it, but I 11 doubt it.</p> <p>12 This -- this letter was so inflammatory and 13 at the time, as I recall, that -- that -- that we 14 were -- we were not overly eager to communicate with 15 Mr. Friedrich or anybody else, for that matter, but 16 I -- there may have, you know.</p> <p>17 Q. So you don't recall reaching out, in any 18 fashion, to PETA to discuss the contents of this 19 letter?</p> <p>20 A. We -- we did at a certain point, but it 21 was -- it was later, as I recall. You may prove me 22 otherwise here.</p> <p>23 Q. Do you recall discussing with anyone the -- 24 the request by PETA to have Safeway adopt a minimum 25 cage space requirement for its egg suppliers as</p>
<p style="text-align: right;">227</p> <p>1 second page says, "In your form letter, Safeway 2 states, 'We have shared PETA's concerns about animal 3 welfare issues with our suppliers and asked that 4 they take the necessary steps to further ensure that 5 their animals are treated humanely.'"</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you recall Safeway asking its suppliers 9 to take necessary steps to further ensure that their 10 animals are treated humanely?</p> <p>11 A. You know, I -- I don't specifically recall, 12 you know, how we would have framed that with him. I 13 mean, you know, he's -- he's quoting from a letter, 14 you know, I'd have to --</p> <p>15 Q. Do you know the letter?</p> <p>16 A. I don't really know the letter. You know, 17 you may have it, but I -- I'm not recalling it.</p> <p>18 Q. And did Safeway reach out in or around early 19 2002 to egg suppliers regarding animal welfare 20 issues?</p> <p>21 A. Not -- not that I recall. Not -- and, 22 again, not that I recall. No. Others may have, but 23 not me.</p> <p>24 Q. Did you have any conversations with Mr. Burd 25 about this letter?</p>	<p style="text-align: right;">229</p> <p>1 reflected in that second bullet point?</p> <p>2 A. In the second bullet point, in the Sean 3 Gifford letter?</p> <p>4 Q. Yes.</p> <p>5 A. Ask me the question again. I'm sorry.</p> <p>6 Q. Do you recall discussing with anyone that 7 particular request?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you know whether Safeway considered that 10 request, in any way?</p> <p>11 A. We may have, but I don't specifically 12 recall.</p> <p>13 (Exhibit 21 was marked for identification 14 and attached hereto.)</p> <p>15 BY MR. FONTECILLA:</p> <p>16 Q. I'm handing you what's been marked as 17 Exhibit 21. Go ahead and -- and take a minute to 18 review that document. This is a highly confidential 19 document Bates stamped PETA 24.</p> <p>20 A. Yeah.</p> <p>21 Q. This is a -- a letter on May 10, 2002 that 22 you received from PETA; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And this is just two months following the 25 last letter we discussed in Exhibit 20; correct?</p>

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Brian Dowling

April 11, 2014

59 (Pages 230 to 233)

<p style="text-align: right;">230</p> <p>1 A. Correct. 2 Q. And he -- the author of this letter to you 3 is a Mr. Gross; right? 4 A. Yep. Yes. 5 Q. Mr. Gross is a consultant for PETA; right? 6 A. That's correct. 7 Q. And he was copied on the letters that we 8 we've previously discussed, Exhibit 19 and 20; 9 correct? 10 A. That is correct. 11 Q. And here, he starts off by saying, "Thank 12 you for your call." 13 Correct? 14 A. That's correct. 15 Q. So within two months of receiving the last 16 letter, you did have a phone call with PETA; 17 correct? 18 A. Yes. As I had indicated, there was a 19 subsequent call, yes. 20 Q. And was this the only call that you had with 21 PETA between the date of the last letter and March 22 of 2002, and the date of this letter of May 2002? 23 A. I believe so. 24 Q. And what was the subject of your 25 conversation with Mr. Gross?</p>	<p style="text-align: right;">232</p> <p>1 Q. And do you recall discussing that particular 2 request with PETA in that phone conversation that 3 you had with Mr. Gross? 4 A. You know, I don't recall specifically, you 5 know, talking to Dr. Gross, as he calls himself. 6 You know, this -- that specific issue. You know, 7 but... 8 Q. And -- 9 A. But it like -- but -- it was probably part 10 of the conversation. 11 I think, again, it was, again it was a long, 12 long time ago, but at the same time, my recollection 13 was it was the conversation was more broadly focused 14 on, you know, the -- the things they would like us 15 to do and the things that would sort of end this, 16 this silly campaign that was... 17 Q. And what aspect of the campaign was silly? 18 A. The silly campaign was -- was, you know, it 19 was Shameway. It was accusing Safeway of -- of, you 20 know, all kinds of, you know, bad things as it 21 related specifically to animal welfare that weren't 22 accurate, weren't true. 23 I mean, we're a retailer, we're not a 24 manufacturer. We manufacture some, you know, some 25 of our own private label products, but in terms of,</p>
<p style="text-align: right;">231</p> <p>1 A. My recollection of the conversation with -- 2 with Gross was, you know, he gets at it here in 3 his -- so bear with me here. Just, let me just... 4 Q. Sure. Absolutely. 5 A. You know, we were -- we were looking to 6 understand what -- what, you know, what it would 7 take to, you know, end the campaign. 8 Q. And so PETA, in this letter, actually asks 9 or informs Safeway of what its terms are for ending 10 the Shameway campaign that was still ongoing at this 11 time; right? 12 A. That's correct. 13 Q. And in order to end the Shameway campaign, 14 PETA is asking Safeway to adopt certain animal 15 welfare programs or policies; correct? 16 A. That's correct. 17 Q. And one of those has to do, in the third 18 bullet point, with the cage space requirements for 19 caged egg laying hens; right? 20 A. That's -- that's what they're asking, yes. 21 Q. Specifically, PETA is asking Safeway to 22 refuse to purchase from eggs suppliers who give hens 23 less than 72 square inches of usable space per bird; 24 right? 25 A. That's what they've asked, yes.</p>	<p style="text-align: right;">233</p> <p>1 you know, eggs and other things, you know, we're not 2 a food production company. And so it just -- it 3 was -- that was the -- and maybe that's a lousy use, 4 but it was a campaign that we were, you know -- it 5 was obviously damaging our reputation. 6 Q. And this is a letter that's dated three 7 months after the email that you had with FMI and 8 Kroger regarding Safeway's frustration with the 9 speed at which FMI was adopting an industrywide 10 animal welfare program; correct? 11 MR. MURRAY: Object to the form of the 12 question. Mischaracterizes the prior document. 13 You can answer. 14 THE WITNESS: Rephrase the question -- or 15 ask, ask the question again, please. 16 BY MR. FONTICILLA: 17 Q. Do you recall the email exchange -- 18 A. Yes. 19 Q. -- that you have in front of you -- 20 A. Yes. 21 Q. -- over there, Exhibit, is that 18? 22 A. 19. 23 Q. Exhibit 19 is the email exchange that you 24 had with FMI and Kroger; correct? 25 A. Correct.</p>

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Brian Dowling

April 11, 2014

60 (Pages 234 to 237)

<p style="text-align: right;">234</p> <p>1 MR. MURRAY: Object to the form of the 2 question. It mischaracterizes the document. 3 BY MR. FONTELLA: 4 Q. And this is -- this letter at Exhibit 21 is 5 three months later; right? 6 A. Yes. 7 Q. What had Safeway been doing with regards to 8 urging FMI to move more quickly in those three 9 months? 10 A. Well, I -- I talked to you about my 11 conversation with Karen Brown. That was largely it. 12 Q. And what was FMI doing during those three 13 months in terms of moving to adopting an 14 industrywide standard? 15 A. I -- I -- 16 MR. MURRAY: Objection. Lack of foundation. 17 THE WITNESS: Yeah. I -- I can't -- I can't 18 speak for FMI on that. I mean, I couldn't tell you 19 specifically what they were doing between that time. 20 BY MR. FONTELLA: 21 Q. Was Safeway involved at all between February 22 of 2002 and May of 2002 in FMI's -- in any of FMI's 23 efforts to consider or design an industrywide animal 24 welfare program? 25 A. In that time period, not that I recall that</p>	<p style="text-align: right;">236</p> <p>1 specifically about the guidelines. I think the way 2 the conversation went is that one of the things, an 3 option, is -- is this -- 4 Q. And -- oh, I'm sorry. I didn't mean to -- 5 A. No. Is -- is that, you know, one of the 6 things you could do would be to affirmatively 7 publicly indicate that you'll implement the FMI-NCCR 8 guidelines. 9 Q. And who brought that up? Was it you or 10 Mr. Gross? 11 A. I think it was -- I think it was him. I 12 can't recall specifically, but I believe it was him. 13 Q. And did he say how he was aware that FMI had 14 guidelines that were going to be released in June? 15 A. I don't remember. 16 Q. Does it strike you as odd that an entity 17 that is not a member of FMI would have inside 18 information about when the guidelines would be 19 released? 20 MR. MURRAY: Object to the form of the 21 question and the characterization. 22 THE WITNESS: I -- I think, you know, Steve 23 Gross was -- my -- again, this is speculating on my 24 part, but I -- my sense is that he would have had 25 some conversations with Karen Brown about some of</p>
<p style="text-align: right;">235</p> <p>1 we were involved specifically there. 2 Q. And -- 3 A. Because much of that happened prior to that, 4 I think, the -- the Safeway employees who were 5 engaged in some of this activity would have happened 6 before that. 7 Q. And in this letter, in Exhibit 21, PETA is 8 giving you a second option and it's asking you 9 instead of -- the first option, which was above was 10 to implement the farmed animal welfare standards 11 already adopted by some fast-food chain restaurants; 12 correct? 13 A. Yes. 14 Q. And then the second one they're offering is 15 if -- that Safeway could end the Shameway campaign 16 by instead agreeing to implement the FMI-NCCR 17 guidelines when they are released in June; correct? 18 A. Correct. 19 Q. And are -- did you discuss the FMI-NCCR 20 guidelines that are referenced there with Mr. Gross 21 in your phone call? 22 A. Generally. 23 Q. And what did you say to Mr. Gross about the 24 FMI-NCCR guidelines? 25 A. I can't recall specifically what I said</p>	<p style="text-align: right;">237</p> <p>1 this activity and the timing. That's the only 2 thing -- that's the only thing that I could... 3 BY MR. FONTELLA: 4 Q. But Safeway itself was aware that FMI's 5 guidelines were planning to be released in June; 6 correct? 7 A. I think that's right. 8 Q. And what involvement, if any, did Safeway 9 have in developing those guidelines? 10 A. Well, I -- again, as we've reviewed in 11 previous documents, I -- I didn't have any, any 12 direct input, but others from our team appear to 13 have had input. 14 Q. And that would have involved the QA team -- 15 A. That's right. 16 Q. -- at Safeway? 17 A. That's right. 18 Q. And in the second page of this -- in the 19 second page of this document Bates stamped -- or 20 sorry, Exhibit 21, it -- it has a statement and the 21 penultimate paragraph that says, "I do want to 22 reiterate that PETA has been impressed by Safeway's 23 strong stand on animal testing as well by your 24 commitment to providing" -- 25 DEPOSITION REPORTER: "I do want to</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

61 (Pages 238 to 241)

<p style="text-align: right;">238</p> <p>1 reiterate..."</p> <p>2 BY MR. FONTECILLA:</p> <p>3 Q. "I do want to reiterate that PETA has been</p> <p>4 impressed by Safeway's strong stand on animal</p> <p>5 testing as well as by your commitment to providing</p> <p>6 healthful vegan and vegetarian foods. We would be</p> <p>7 very happy to be able to say that Safeway is the</p> <p>8 leader among grocery chains on the animal welfare</p> <p>9 front."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Was it your understanding that PETA was</p> <p>13 offering to issue a public statement regarding</p> <p>14 Safeway's animal welfare practices in exchange for</p> <p>15 Safeway adopting one of the two proposals listed on</p> <p>16 the first page of this letter?</p> <p>17 MR. MURRAY: Objection to the form of the</p> <p>18 question. Mischaracterizes the document.</p> <p>19 THE WITNESS: Ask the question again,</p> <p>20 please. I'm sorry.</p> <p>21 BY MR. FONTECILLA:</p> <p>22 Q. Sure. The first page of this letter</p> <p>23 presented two options for Safeway to adopt in</p> <p>24 exchange for ending PETA's Shameway campaign;</p> <p>25 correct?</p>	<p style="text-align: right;">240</p> <p>1 A. Yes.</p> <p>2 (Exhibit 22 was marked for identification</p> <p>3 and attached hereto.)</p> <p>4 BY MR. FONTECILLA:</p> <p>5 Q. I'm handing you what's been marked as</p> <p>6 Exhibit 22. Go ahead and take a minute to review</p> <p>7 this document, Mr. Dowling.</p> <p>8 This document, for the record, is a</p> <p>9 confidential document Bates stamped FMI-000196.</p> <p>10 A. Okay. Yes.</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. I -- I do, yes.</p> <p>13 Q. And how do you recognize it?</p> <p>14 A. It's a press release in and around the time,</p> <p>15 I remember we had a shareholders meeting --</p> <p>16 Q. And you're saying -- I'm sorry. This is a</p> <p>17 PETA press release; correct?</p> <p>18 A. Yes.</p> <p>19 Q. At around the time of May 15th, 2002;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And this is five days following the letter</p> <p>23 that we saw in Exhibit 21 --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- from PETA to you; correct?</p>
<p style="text-align: right;">239</p> <p>1 A. Correct.</p> <p>2 Q. Was one of the additional considerations</p> <p>3 that PETA was offering Safeway in exchange for</p> <p>4 adopting one of those two options that PETA would</p> <p>5 publicly support Safeway as a leader among grocery</p> <p>6 chains on the animal welfare front?</p> <p>7 MR. MURRAY: Same objection.</p> <p>8 THE WITNESS: You know, I don't recall that</p> <p>9 as being specifically a condition. I mean, they</p> <p>10 obviously expressed a willingness to do that. That</p> <p>11 was sort of often times here and subsequently</p> <p>12 with -- with Steve Gross always that option to, you</p> <p>13 know, you do something good, we'll go out and tell</p> <p>14 the world about it.</p> <p>15 I mean, that was his sort of entree here, I</p> <p>16 think, you know, and -- and we -- we didn't</p> <p>17 necessarily put all that much stock necessarily</p> <p>18 there because I think the -- the mainstream media</p> <p>19 takes PETA for -- for kind of what it is. I mean,</p> <p>20 it's an activist group with -- with -- and so I --</p> <p>21 it -- it obviously is sort of they've offered that</p> <p>22 up, whether or not that was -- that was the most</p> <p>23 important thing to us.</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. But it was considered by Safeway; right?</p>	<p style="text-align: right;">241</p> <p>1 A. Correct.</p> <p>2 Q. And when -- about when was the shareholder</p> <p>3 meeting that you're referring to?</p> <p>4 A. In and around the 14th, 15th -- 15th</p> <p>5 probably, 15th, 16th, you know, I'd have to -- I'd</p> <p>6 have to look. I -- I should know that, but I don't.</p> <p>7 Q. Did PETA have any involvement in that</p> <p>8 shareholder meeting?</p> <p>9 A. They came to the shareholder meeting, yes.</p> <p>10 Q. And why did they come to the shareholder</p> <p>11 meeting?</p> <p>12 A. They originally came to protest, but they</p> <p>13 came to, you know, they -- they ended up speaking as</p> <p>14 a shareholder. They were shareholders in some form,</p> <p>15 and Bruce Friedrich got up and made a rather long</p> <p>16 speech about, on the one hand, complimenting</p> <p>17 Safeway, and on the other hand, this -- this rather</p> <p>18 long, you know, diatribe on -- as it related to, you</p> <p>19 know, animal welfare and how poorly animals are</p> <p>20 handled in the food -- food, you know, production</p> <p>21 system. It was -- and he went on for probably 15</p> <p>22 minutes.</p> <p>23 Q. Did anyone from PETA speak at the meeting?</p> <p>24 A. No. No, as I recall.</p> <p>25 Q. This press release in Exhibit 22 references</p>

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Brian Dowling

April 11, 2014

62 (Pages 242 to 245)

<p style="text-align: center;">242</p> <p>1 an agreement that PETA has reached with Safeway; 2 right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And do you know --</p> <p>5 MR. MURRAY: You have to say "yes" or "no."</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. FONTECILLA:</p> <p>8 Q. -- when was the agreement that PETA reached 9 with Safeway that's referred to in Exhibit 22 10 reached?</p> <p>11 A. It would have been probably on the 14th.</p> <p>12 Q. On the day of the shareholder meeting?</p> <p>13 A. It would have been the day before the 14 shareholder meeting.</p> <p>15 Q. So on May 13th; right?</p> <p>16 A. In and around there, yes. I -- I can't 17 recall specifically the day.</p> <p>18 Q. Did Safeway know that PETA or its 19 representatives were going to appear at the 20 shareholder meeting on May 14, 2002 prior to the 21 meeting?</p> <p>22 A. We did.</p> <p>23 Q. And was that a consideration in Safeway's 24 evaluation of whether to adopt one of the two 25 options presented in Exhibit 21 by PETA to Safeway?</p>	<p style="text-align: center;">244</p> <p>1 having animal welfare issues and we would audit that 2 supplier.</p> <p>3 Q. And prior to entering into the agreement 4 with PETA on May 13th, 2002, Safeway knew what the 5 FMI guidelines were that were ultimately going to be 6 released in June; right?</p> <p>7 MR. MURRAY: Objection. Calls for 8 speculation.</p> <p>9 THE WITNESS: We -- we, you know, again, 10 I -- I -- we generally knew, yes. Yes.</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. And specifically, Safeway knew what the 13 guidelines were going to be with respect to caged 14 egg laying hens; right?</p> <p>15 MR. MURRAY: Same objection.</p> <p>16 THE WITNESS: Yeah. Again, I -- when it -- 17 yeah, I...</p> <p>18 BY MR. FONTECILLA:</p> <p>19 Q. Someone at Safeway --</p> <p>20 MR. MURRAY: Well, let him finish his 21 answer.</p> <p>22 THE WITNESS: No, I'm just -- I'm just -- 23 rephrase your question, then, please.</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. Sure. The agreement that Safeway entered</p>
<p style="text-align: center;">243</p> <p>1 A. It was a consideration. It wasn't the only 2 consideration.</p> <p>3 Q. And how did Safeway convey its agreement 4 with PETA on May 13th of 20- -- of 2002? 5 Excuse me.</p> <p>6 A. You know, I would have to -- I -- I can't 7 recall specifically, but I do recall and I, you 8 know, verbally communicating doing what we do. 9 There may have been something in writing. I can't 10 recall.</p> <p>11 Q. And who did you communicate Safeway's 12 agreement to at PETA?</p> <p>13 A. It probably was Steve Gross. It could have 14 been Bruce Friedrich. I cannot recall specifically 15 who I communicated with. It was one of the two.</p> <p>16 Q. And which of the two options in Exhibit 21 17 did Safeway agree to with PETA?</p> <p>18 A. It was sort of a -- it was not necessarily 19 one or the other. It was -- it was a mix, actually, 20 but it was primarily the adoption of the FMI-NCCR 21 guidelines.</p> <p>22 Q. And --</p> <p>23 A. And -- and there was -- there was specifics 24 as it related to a particular supplier, a pork 25 supplier, Seaboard, that -- that they'd pegged as</p>	<p style="text-align: center;">245</p> <p>1 into with PETA on May 13, 2002, was after Safeway 2 had seen the guidelines that FMI planned to release 3 in June; right?</p> <p>4 MR. MURRAY: Object to the form of the 5 question.</p> <p>6 THE WITNESS: Yeah, we -- we were aware of 7 the guidelines, aware of the -- the FMI-NCCR 8 guidelines. We'd seen those guidelines, yes.</p> <p>9 BY MR. FONTECILLA:</p> <p>10 Q. And part of those guidelines included a part 11 with respect to the cage space requirements for egg 12 laying hens; right?</p> <p>13 A. That's correct.</p> <p>14 Q. So Safeway had seen those guidelines as they 15 applied to caged egg laying hens prior to entering 16 into the agreement with PETA on May 13th, 2002, to 17 adopt the guidelines; right?</p> <p>18 A. I believe that's true.</p> <p>19 Q. And part of the agreement entered into with 20 PETA on May 13th, 2002, involved an implementation 21 timeline; correct?</p> <p>22 A. I -- I think that's true. I'd -- I'd need 23 to -- I believe so.</p> <p>24 Q. And if you look at the press release in 25 Exhibit 22, actually on the second kind of asterisk</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

63 (Pages 246 to 249)

<p style="text-align: right;">246</p> <p>1 bullet point there under the PETA's agreement with 2 Safeway includes -- 3 A. Uh-huh. 4 Q. -- it has a bullet point about the 5 implementation timeline that was agreed to between 6 PETA and Safeway; correct? 7 A. Correct. 8 Q. And it actually says that PETA and Safeway 9 have agreed to -- for Safeway to implement within 6 10 to 18 months the FMI guidelines that were going to 11 be released; right? 12 MR. MURRAY: Object to the form. You 13 misread the document. 14 BY MR. FONTICILLA: 15 Q. I mean, why don't you take a second to read 16 the document and tell me what the implementation 17 time period was for implementing the FMI guidelines 18 by Safeway. 19 A. Yeah, again, this is just such a -- you 20 know, a long time ago and, you know, I -- I can, you 21 know, I'm having trouble even recalling sort of the 22 timeline piece and what we agreed to and what we 23 didn't agree to. Because it shows up in a PETA 24 press release doesn't necessarily mean we -- we 25 agreed to it. But --</p>	<p style="text-align: right;">248</p> <p>1 cage space and timelines and what we would do. 2 BY MR. FONTICILLA: 3 Q. And at the bottom of this letter, it says, 4 or press release it says, "PETA had planned to read 5 a letter from actor Richard Pryor at the company's 6 annual meeting tomorrow...criticizing the company's 7 intransigence." 8 Does that refresh your recollection as to 9 whether the shareholder meeting was on May 16th, 10 2002? 11 A. Yeah, it does. 12 Q. And so the shareholder meeting was going to 13 be on May 16th, 2002; correct? 14 A. That's correct. 15 Q. The day after the press release was issued 16 announcing the agreement between PETA and Safeway; 17 correct? 18 A. Uh-huh. Yes. 19 Q. And did Safeway also release its own press 20 release regarding its agreement with PETA? 21 A. I don't recall. I'd have to -- I -- I don't 22 believe we did. 23 Q. Did you make any statements publicly 24 regarding Safeway's agreement with PETA in or about 25 May 13th, 2002 to May 16th, 2002?</p>
<p style="text-align: right;">247</p> <p>1 Q. Was -- 2 A. Go ahead. 3 Q. Was there a -- an implementation timeline of 4 some period for Safeway to adopt the FMI guidelines 5 as part of its agreement with PETA? 6 A. That may have been the case, yes. 7 Q. You conveyed the agreement to PETA and you 8 said it was probably Mr. Gross; right? 9 A. That's -- I believe so. 10 Q. And did you convey to him an agreement to 11 implement the FMI guidelines within a particular 12 time period? 13 A. You know, I -- I just honestly can't recall. 14 Q. And the time period that's referred to in 15 this PETA press release includes a time period for 16 the implementation of guidelines for increased cage 17 space for laying hens; right? 18 A. I see that, yes. 19 Q. Did Safeway agree to implement increased 20 cage space for laying hens by a particular time 21 period in its agreement with PETA on May 13, 2002? 22 MR. MURRAY: Object to the form of the 23 question. 24 THE WITNESS: Yeah. I -- I don't recall, 25 frankly, I mean, from this, specifically on -- on</p>	<p style="text-align: right;">249</p> <p>1 A. I did. 2 Q. And what public statements were those? 3 A. I -- I had inquiries from various 4 publications, including the Contra Costa Times, I 5 think the San Francisco Chronicle, some of the Bay 6 Area newspapers about, you know, PETA calling off 7 the campaign, and -- and I remember talking to 8 reporters -- 9 Q. And -- 10 A. -- broadly about what we were doing and what 11 we were -- how this all came about. 12 Q. And prior to making those statements, did 13 you discuss internally what the strategy, messaging 14 strategy would be for announcing this agreement with 15 PETA? 16 A. We -- I probably had some conversations 17 internally. I can't remember with -- specifically 18 with who. 19 Q. And generally, what was the messaging 20 strategy that Safeway was adopting in connection 21 with announcing the agreement with PETA that was 22 reached on May 13th, 2002? 23 A. What was the messaging strategy? We, you 24 know, as the -- as we got the calls, we were going 25 to, you know -- you know, explain to the media what</p>

HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

64 (Pages 250 to 253)

<p style="text-align: right;">250</p> <p>1 we've agreed to do and the kinds of things that 2 we're going to do and that was largely it. 3 Q. Did any of that messaging delivered by 4 Safeway in connection with the agreement you had 5 reached with PETA on May 13th, 2002, involve 6 announcing that Safeway would be adopting increased 7 cage space for laying hens for its egg suppliers?</p> <p>8 A. I -- it could have. I'd have to look back 9 at the -- and I -- I -- in preparation for this, I 10 looked at some of the stories, but I'm not 11 immediately recalling exactly what we said on -- on 12 cage space.</p> <p>13 Q. But you do recall that the quotes that you 14 gave had something to do with the cage space?</p> <p>15 A. I believe they -- I believe that came up 16 in -- in conversations with -- with reporters. I 17 believe so. I can't recall specifically.</p> <p>18 Q. Okay.</p> <p>19 MR. FONTECILLA: Is this a good time to take 20 a break?</p> <p>21 MR. MURRAY: Yeah. I was going to say the 22 same thing myself.</p> <p>23 THE VIDEOGRAPHER: Going off the record.</p> <p>24 The time is 3:02 p.m. This marks the end of Disk 25 No. 3 in the deposition of Brian Dowling.</p>	<p style="text-align: right;">252</p> <p>1 A. I did. 2 Q. And you read it in its entirety. 3 A. I did, yes. 4 Q. Who gave you that transcript? 5 A. Jim Wick, our -- one of our legal team, that 6 was -- that was the Jim, Kevin and Jim, yeah. 7 Q. And why did you read that transcript? 8 A. In -- in preparation, I -- I simply wanted 9 to sort of see, you know, what was being asked. I 10 wanted to be prepared. I wanted to see -- that 11 was -- that was my only interest. I mean, I was -- 12 I was willing to see anybody -- I just wanted to 13 see, you know, what was -- what was coming up and -- 14 and what was the discussion like in preparation for 15 this.</p> <p>16 Q. Did that transcript refresh your 17 recollection as to any events during this relevant 18 time period?</p> <p>19 A. Yeah. It was 112 pages, but it did. But, 20 yes, it was -- it was helpful in -- in refreshing 21 some of my recollection.</p> <p>22 Q. Any specific events that you recall? 23 A. I -- not -- not that I can specifically 24 recall.</p> <p>25 Q. And did you ask for or review any other</p>
<p style="text-align: right;">251</p> <p>1 (Off the record.)</p> <p>2 THE VIDEOGRAPHER: We're back on the record.</p> <p>3 The time is 3:15 p.m. This marks the beginning of</p> <p>4 Disk No. 4 in the deposition of Brian Dowling.</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. ADENDORFF:</p> <p>8 Q. Mr. Dowling, I introduced myself earlier, 9 but I'm Olivia Adendorff, and I represent a 10 different defendant, Cal-Maine Foods, and I'll be 11 asking you some questions.</p> <p>12 MR. MURRAY: Okay. And the understanding 13 here is that you're going to ask out of turn so you 14 have time to catch a flight.</p> <p>15 MS. ADENDORFF: Correct.</p> <p>16 MR. MURRAY: Is that correct?</p> <p>17 MS. ADENDORFF: Correct.</p> <p>18 MR. MURRAY: And we've agreed to accommodate 19 that request.</p> <p>20 MS. ADENDORFF: Correct. And Adrian will 21 take over again when I'm done.</p> <p>22 BY MS. ADENDORFF:</p> <p>23 Q. Now, you testified earlier today that in 24 preparation for this deposition, you reviewed 25 Virginia Littlefield's deposition; is that correct?</p>	<p style="text-align: right;">253</p> <p>1 transcripts?</p> <p>2 A. No.</p> <p>3 Q. When speaking this morning about the 2006 4 Safeway Animal Welfare Committee meeting, you 5 mentioned that Joy Mench told Safeway that cage 6 space was "a valid issue."</p> <p>7 Do -- does Safeway -- did Safeway ultimately 8 reach the conclusion that the cage space issue for 9 egg laying hens was a valid issue?</p> <p>10 MR. MURRAY: Object to the form of the 11 question. It's vague.</p> <p>12 THE WITNESS: Ask the question again, 13 please. I'm sorry.</p> <p>14 BY MS. ADENDORFF:</p> <p>15 Q. Did Safeway ultimately reach the conclusion 16 that the cage space issue for egg laying hens was a 17 valid issue?</p> <p>18 MR. MURRAY: Same objection.</p> <p>19 THE WITNESS: The company -- again -- and, 20 again, I'm -- I manage communications and PR, but 21 the answer is yes, we -- we came to the conclusion, 22 the company came to the conclusion that this was a 23 valid issue, yes.</p> <p>24 BY MS. ADENDORFF:</p> <p>25 Q. And you understood that the FMI guidelines</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

65 (Pages 254 to 257)

<p style="text-align: right;">254</p> <p>1 addressed cage space for egg laying hens. 2 A. That's correct. 3 Q. How often does FMI hold in-person meetings? 4 A. You know, I don't attend FMI in-person 5 meetings, but there -- 6 (Conference call interference.) 7 MR. MURRAY: Objection to that question to 8 the lack of specificity. 9 You can answer, if you know. 10 THE WITNESS: They hold meetings 11 periodically. I know that they do some of them 12 telephonically. The communications call they do 13 primarily telephonically. And a member of my team 14 is on the communications meeting. We have a person 15 on the government relations committee. I think they 16 meet at least twice a year, maybe more, sometimes 17 telephonically, but the meetings happen periodically 18 during the course of the year. 19 BY MS. ADENDORFF: 20 Q. Do Safeway employees, that you know of, ever 21 travel to FMI meetings in person? 22 A. Yes. 23 Q. And does Safeway pay their expenses for them 24 to do that? 25 A. Yes.</p>	<p style="text-align: right;">256</p> <p>1 MR. MURRAY: Objection. Overly broad. 2 THE WITNESS: I get LexisNexis news feeds. 3 I get Google alerts. I read multiple newspapers a 4 day. I get a blog, food industry blog that I -- 5 that highlights stories in and around the news 6 industry -- or excuse me -- the food industry. So 7 myself, my director of public affairs, who handles 8 media relations, she also monitors those, and so, 9 yeah, we -- we keep an eye out and watch public 10 statements about our company, about the industry. 11 Yes, we do. 12 BY MS. ADENDORFF: 13 Q. As part of that monitoring, do you also keep 14 an eye out for statements by your competitors? 15 A. Yes, we do. 16 Q. And who do you consider your competitors to 17 be now today? 18 A. A broad range of both conventional 19 supermarket companies like Kroger, as well as, you 20 know, the, you know, the mass, you know, Targets, 21 Wal-Marts, Wal-Mart supercenters, neighborhood 22 stores. 23 The -- the landscape for groceries has 24 changed dramatically in recent years, in the last 25 ten years in particular. It used to be largely</p>
<p style="text-align: right;">255</p> <p>1 Q. Why do you think that Safeway pays for its 2 employees to work at FMI on its behalf? 3 MR. MURRAY: Object to the form of the 4 question. Calls for speculation. 5 You can answer, if you know. 6 THE WITNESS: Safeway -- I mean, excuse me. 7 FMI is the trade association representing our 8 organization both nationally and our -- at -- that 9 are at the capital and -- and represents the -- the 10 industry overall. You know, we have an interest in 11 that obviously as one of the largest retailers in 12 the United States. It makes sense, stands to reason 13 that we would have representatives on various 14 committees of FMI. 15 BY MS. ADENDORFF: 16 Q. Have you ever been involved in a discussion 17 at Safeway of where people have discussed why 18 Safeway is a member of FMI? 19 A. No. It's -- we've been, as long as I can 20 remember, we've been a member of FMI. There was no 21 discussion that I can recall about whether or not we 22 should or shouldn't. 23 Q. As part of your job in communications, do 24 you monitor statements in the press that might 25 affect the retail grocery industry?</p>	<p style="text-align: right;">257</p> <p>1 conventional -- conventional supermarkets. Now it's 2 everybody and their brother, including, you know -- 3 including even the drugstore is selling food. So 4 it's -- it's a broader cross section of retailers 5 that are selling groceries than -- than in years 6 ago. 7 Q. So in 1999, it would have been more grocery 8 stores? 9 A. It would have been more grocery stores, yes. 10 Q. And what grocery stores specifically would 11 those be on -- on sort of a national level? 12 A. Safeway, Kroger, Albertson's. Other parts 13 of the United States, Publix, HEB, regional chains, 14 lots of regional, more regional chains that were 15 independent in -- in 1999 than -- than today. 16 Q. And in 2002, who would you have said your 17 competitors were? 18 A. Some of the same, but Wal-Mart had grown 19 considerably into the business by 2002. They -- 20 their supercenter business had grown substantially 21 by 2002. 22 Q. In 2001, 2002, when you were considering 23 making changes to or establishing Safeway's animal 24 welfare policy, did you take a look at what your 25 competitors' animal welfare policies were at the</p>

HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

66 (Pages 258 to 261)

<p>258</p> <p>1 time?</p> <p>2 A. Did I specifically as an individual or the 3 company?</p> <p>4 Q. The company.</p> <p>5 A. Generally. You know, we didn't do a 6 specific retailer-by-retailer analysis of each 7 company. But over time, I may have looked at other 8 what other companies were doing.</p> <p>9 Q. Do you --</p> <p>10 A. This is 2002, you're -- you're saying?</p> <p>11 Q. Right.</p> <p>12 A. You know, and there wasn't a lot going on, 13 frankly, on an individual retailer basis where you 14 would have had websites where you could review 15 things like you might today where you could go into 16 a Whole Foods website or you could go into a Target 17 website or a Kroger website and pick up something 18 on, you know, animal welfare. In '02, I think -- I 19 think it would have been tougher to do that.</p> <p>20 But I don't recall specifically saying, 21 let's -- let's look at the following retailers and 22 sort of see exactly what they're doing and how 23 they're doing it.</p> <p>24 Q. In 2002, did you have any understanding of</p> <p>25 what Kroger's animal welfare policy was?</p>	<p>260</p> <p>1 BY MS. ADENDORFF:</p> <p>2 Q. You said you do not.</p> <p>3 A. I do not. I did not.</p> <p>4 Q. Did you know if Albertson's was also relying</p> <p>5 on FMI?</p> <p>6 A. I don't really know much about the 7 Albertson's piece.</p> <p>8 Q. What about Publix, did you know --</p> <p>9 A. No.</p> <p>10 Q. -- if they were relying on FMI?</p> <p>11 A. I don't.</p> <p>12 Q. Does Safeway want to make sure that it</p> <p>13 follows industry norms in areas like its corporate</p> <p>14 responsibility statements?</p> <p>15 MR. MURRAY: Object to the form of the</p> <p>16 question. It's overly broad.</p> <p>17 THE WITNESS: Ask the question again,</p> <p>18 please.</p> <p>19 BY MS. ADENDORFF:</p> <p>20 Q. Does Safeway want to make sure it's</p> <p>21 following industry standard norms in areas like</p> <p>22 corporate social responsibility?</p> <p>23 MR. MURRAY: Same objection. It's also</p> <p>24 vague.</p> <p>25 THE WITNESS: Yeah. I mean, I -- again,</p>
<p>259</p> <p>1 A. You know, I had a limited understanding.</p> <p>2 Q. What was that understanding?</p> <p>3 A. That they didn't have a lot going on. That 4 they were largely relying -- my recollection was 5 they were largely relying on FMI to do the work that 6 FMI was doing in gathering up best practices in -- 7 amid, you know, sort of the various food production 8 species. That was my recollection of what Kroger 9 was doing, that Kroger didn't have a specific set of 10 policies that were Kroger specific.</p> <p>11 Q. Do you -- you have any recollection of</p> <p>12 Albertson's policy --</p> <p>13 A. I don't.</p> <p>14 Q. -- in 2002?</p> <p>15 Did you --</p> <p>16 MR. MURRAY: Which Albertson's are you</p> <p>17 talking about?</p> <p>18 MS. ADENDORFF: The Albertson's that existed</p> <p>19 in 2002.</p> <p>20 MR. MURRAY: Okay. Not the Albertson's, LLC</p> <p>21 that's a plaintiff in this case?</p> <p>22 MS. ADENDORFF: Correct.</p> <p>23 MR. MURRAY: Okay.</p> <p>24 THE WITNESS: I do not --</p> <p>25 ///</p>	<p>261</p> <p>1 it's a broad question, you know. And our policies</p> <p>2 as it relates to corporate social responsibility</p> <p>3 have evolved over time.</p> <p>4 I think it's -- I think it's fair so say</p> <p>5 that the answer would be yes, that we wouldn't want</p> <p>6 to be out of step with industry norms. I think</p> <p>7 rather, we would be -- we'd like to consider</p> <p>8 ourselves a leader on -- on its corporate social</p> <p>9 responsibility issues and sustainability issues</p> <p>10 rather than a follower.</p> <p>11 BY MS. ADENDORFF:</p> <p>12 Q. Is the same true of its animal welfare</p> <p>13 policies specifically?</p> <p>14 A. I -- I would say yes.</p> <p>15 Q. And does Safeway want to be taking the most</p> <p>16 aggressive approach towards animal welfare in the</p> <p>17 market?</p> <p>18 A. I wouldn't say --</p> <p>19 MR. MURRAY: Objection to the form of the</p> <p>20 question. It's vague. And it's overly broad.</p> <p>21 THE WITNESS: Yeah, I think aggressive is</p> <p>22 the -- is the wrong way to describe it. I think we</p> <p>23 want to do the right thing as it relates to animal</p> <p>24 welfare. We'd like to take a leadership role, as I</p> <p>25 said earlier. "Aggressive" I think is -- is not how</p>

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Brian Dowling

April 11, 2014

67 (Pages 262 to 265)

<p style="text-align: right;">262</p> <p>1 I would characterize the -- 2 BY MS. ADENDORFF: 3 Q. Does -- does Safeway believe that adopting 4 the FMI animal welfare guidelines was the right 5 thing?</p> <p>6 A. Again -- 7 MR. MURRAY: Object to the form of the 8 question as vague. 9 You can answer it.</p> <p>10 THE WITNESS: Yeah, again, you know, my -- 11 my function within Safeway while I serve on the 12 committee, the Animal Welfare Committee, you know, 13 you're asking -- I -- I think the answer is yes, 14 but, you know, it's -- it's, you know, I'm not the 15 only one who, you know, sort of makes those 16 judgments. But the answer, I think the answer is 17 yes to the question's roundabout way of getting it, 18 an answer.</p> <p>19 BY MS. ADENDORFF: 20 Q. You mentioned earlier that in 2002, you 21 don't think that you had comprehensively 22 investigated all of your competitors' animal welfare 23 policies. Have you done anything in that regard 24 since then?</p> <p>25 A. You know, I -- I think not -- not</p>	<p style="text-align: right;">264</p> <p>1 counterparts at Kroger about their animal welfare 2 policies? 3 A. Well, I've talked to Lynn Marmer many years 4 ago about it, but that was a long time ago. 5 Q. And that was about egg laying hens; right? 6 A. It was about animal welfare generally. 7 Q. And the FMI process. 8 A. Yes. 9 Q. This morning you testified that Karen Brown 10 told you in the 2002 timeframe to let her handle 11 PETA; right? 12 A. Yes. 13 Q. Why did FMI hope that no individual company 14 would work with PETA? 15 A. Well, I think it's -- 16 MR. MURRAY: Object to the form of the 17 question. Calls for speculation. 18 THE WITNESS: Yeah, I -- I can't speculate. 19 That's -- I can't speculate. However, I would -- I 20 would -- the only thing that I would suggest, 21 perhaps, is that I think FMI was concerned that 22 you'd have multiple retailers out doing different 23 things and you'd have this sort of patchwork of -- 24 of standards being set by individual companies 25 rather than the industry as a whole. And I think</p>
<p style="text-align: right;">263</p> <p>1 systematically. I think we're more alert and aware 2 of what competitors are doing today than we were 3 back then because it's more readily available. I 4 think I'd -- I'd be -- I can -- I can more easily 5 get at, I mentioned Whole Foods' policies or others 6 and some are more open about it than others. 7 Q. As part of your efforts with the Animal 8 Welfare Committee within Safeway, did you ever look 9 at your competitors' animal welfare policies with 10 respect to egg laying hens? 11 A. Again, it was -- the -- whatever we would 12 have looked at, at that point it was more broadly 13 sort of animal welfare overall. But I don't 14 remember us specifically saying, what's -- you know, 15 what's Kroger specifically doing on -- on egg laying 16 hens. 17 Q. Did you know that Kroger had endorsed the 18 FMI guidelines? 19 A. Again, we're going back to '02; right? 20 Yeah. 21 Q. Correct. 22 A. Twelve years ago. 23 I -- I think -- I think we knew, yes. I 24 think we did. 25 Q. Have you ever spoken directly to your</p>	<p style="text-align: right;">265</p> <p>1 they were of the view that it would be easier to 2 sort of manage, control if -- if you -- you had 3 everybody sort of in block step. I think that 4 played into it, I think. And that's -- 5 BY MS. ADENDORFF: 6 Q. Why -- 7 A. -- that's not atypical of FMI. I mean, as 8 it relates not just to animal welfare, but other 9 issues as well affecting the food, the retail food 10 industry. I mean, their preference is that -- you 11 know, and it makes sense that, you know, the 12 industry, on a lot of different issues, is -- is, 13 you know, taking positions that are common across 14 the retail landscape rather than, you know, 15 individual companies. 16 Q. Was that Safeway's preference as well at the 17 time? 18 MR. MURRAY: Object to the form of the 19 question. 20 THE WITNESS: Again, a long time ago. 21 Safeway, I think, at -- again, in '02, as I 22 indicated to Adrian, was -- was sort of trying to 23 work through the issue and trying to understand its 24 position and where it should be. Clearly, we were 25 getting pressure at a certain point and -- but I</p>

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Brian Dowling

April 11, 2014

68 (Pages 266 to 269)

<p style="text-align: right;">266</p> <p>1 think -- I think broadly, I think our -- our view 2 would be that, you know, it would be perhaps better 3 if the industry, as a whole, was -- was sort of in 4 unison, any way. I'm not sure I'm...</p> <p>5 BY MS. ADENDORFF:</p> <p>6 Q. You testified earlier that Safeway, as a 7 retailer, is on the front lines with PETA; correct?</p> <p>8 A. Well, I was trying to make the point we're 9 on the front lines with our -- our -- with consumers 10 and -- and for that reason, we're in a different 11 position than -- than sort of some of the 12 manufacturers are.</p> <p>13 You know, we get exposed to our customer 14 base, we get lots of feedback, we're -- we're seeing 15 our customers two or three times a week. So in that 16 sense, we're on the frontline with consumers in the 17 marketplace. So in that sense, the companies, the 18 retailers are -- are more vulnerable, I think, to 19 the pressures from organizations like this than -- 20 than manufacturers might be. I guess that was the 21 point I was trying to make.</p> <p>22 Q. When Safeway was considering whether cage 23 space was a real issue for Safeway, did it consider 24 the ability that it had to make demand for change 25 with its suppliers?</p>	<p style="text-align: right;">268</p> <p>1 it was the right thing to do. It wasn't a matter of 2 us pressuring suppliers or -- it -- it was -- it was 3 for the reason -- the first reason I mentioned.</p> <p>4 Q. Could Safeway satisfy its animal welfare 5 policy without the efforts of its suppliers?</p> <p>6 MR. MURRAY: Objection. It's outside the 7 scope of this witness' designation.</p> <p>8 THE WITNESS: Yeah. Again, I -- you're -- 9 that's a question that should be directed, you know, 10 at -- at someone else at Safeway.</p> <p>11 BY MS. ADENDORFF:</p> <p>12 Q. When you were working on developing the 13 policy, who was it for?</p> <p>14 A. You know, the -- the policy as it -- was 15 Safeway's overall policy.</p> <p>16 Q. Was the policy to be used with its buyers 17 with its suppliers?</p> <p>18 MR. MURRAY: Object to the form of the 19 question. It's vague.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 BY MS. ADENDORFF:</p> <p>22 Q. You participated in the animal welfare 23 policy -- you participated in the Animal Welfare 24 Committee that established Safeway's animal welfare 25 policy; correct?</p>
<p style="text-align: right;">267</p> <p>1 MR. MURRAY: Object to the form of the 2 question. It's outside the scope of this witness' 3 examination.</p> <p>4 THE WITNESS: Yeah, I -- yeah, that's -- 5 that was not part of my -- my interaction with 6 suppliers, and, I mean, I was -- I was on the -- the 7 communication side interaction with these groups, 8 but not -- that wasn't something that I was 9 considering or looking at.</p> <p>10 BY MS. ADENDORFF:</p> <p>11 Q. Did Safeway invest in making an animal 12 welfare policy in the hopes its suppliers would meet 13 that policy?</p> <p>14 MR. MURRAY: Objection to the form of the 15 question. Again, it's outside the scope.</p> <p>16 THE WITNESS: Ask the question again, 17 please.</p> <p>18 BY MS. ADENDORFF:</p> <p>19 Q. Did Safeway invest in making an animal 20 welfare policy in the hopes that its suppliers would 21 meet that policy?</p> <p>22 A. No. I -- I think -- I think, you know, we 23 were -- we were trying to form a -- a position as a 24 company on these issues because it was the -- we -- 25 because it was the right thing to do for -- because</p>	<p style="text-align: right;">269</p> <p>1 MR. MURRAY: Objection. It mischaracterizes 2 his prior testimony.</p> <p>3 THE WITNESS: I'm a member of the committee.</p> <p>4 Correct. And --</p> <p>5 BY MS. ADENDORFF:</p> <p>6 Q. And what was the intended purpose of the 7 policy or the use of the policy within Safeway?</p> <p>8 A. The use of what policy?</p> <p>9 Q. The policy that you were working to develop.</p> <p>10 A. The intent was to form a -- policies in and 11 around animal welfare issues.</p> <p>12 Q. For use -- how would Safeway use its own 13 policy?</p> <p>14 A. How would we use our own policy? Well, 15 again, I -- we were -- we were trying to develop a 16 policy that made sense for our company and that 17 would, you know, promote, you know -- you know, 18 sound animal welfare policies. I mean, I'm...</p> <p>19 Q. Promote it with who?</p> <p>20 A. You know, within our company. You know, 21 and, again, I -- I think, you know, promote it, you 22 know, we wanted to communicate it to our customers, 23 our employees, other stakeholders as well.</p> <p>24 Q. Would those stakeholders involve suppliers?</p> <p>25 A. I would think it would involve suppliers as</p>

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Brian Dowling

April 11, 2014

69 (Pages 270 to 273)

<p style="text-align: right;">270</p> <p>1 well, yes. 2 Q. Let's look at Exhibit 9 again briefly. 3 A. Which -- which one is the -- 4 MR. MURRAY: You've got to go through the 5 pile. 6 Unless you have a better way of identifying 7 it for him. 8 MS. ADENDORFF: No. It should be in your 9 stack, hopefully. 10 THE WITNESS: Yeah. Sure. Here's 8 and 11 then there is -- 12 BY MS. ADENDORFF: 13 Q. This document is entitled "FMI Meeting Notes 14 November 29th, 2000." 15 DEPOSITION REPORTER: Do you have several 16 documents you're going to go through? 17 MS. ADENDORFF: Uh-huh. 18 DEPOSITION REPORTER: Why don't you go off 19 the record for a second. 20 MS. ADENDORFF: Sure. 21 THE VIDEOGRAPHER: We're going off the 22 record. The time is 3:34 p.m. 23 (Off the record.) 24 THE VIDEOGRAPHER: We're back on the record. 25 The time is 3:35 p.m.</p>	<p style="text-align: right;">272</p> <p>1 your name is mentioned? 2 MR. MURRAY: Yes. Let him finish reading 3 it, please. 4 THE WITNESS: Yes, I see that. 5 BY MS. ADENDORFF: 6 Q. And can you read the second paragraph from 7 the bottom says, "We've been among those pushing 8 FMI to establish guidelines all along." Mr. Dowling 9 said." 10 That's a quote from you; correct? 11 A. Yes. 12 Q. And Safeway did, in fact, push FMI to adopt 13 animal welfare guidelines; correct? 14 A. Yeah. If I had to choose my words again, I 15 would have chosen differently. But, yes, we were -- 16 we were... 17 Q. And do you see in the next sentence that it 18 discusses PETA's pressure on multiple retailers, but 19 in general, the article also discusses PETA's 20 pressure on Safeway. 21 And you have testified today that PETA did, 22 in fact, have a Shameway campaign against Safeway; 23 correct? 24 A. Correct. 25 Q. And you testified that Safeway was concerned</p>
<p style="text-align: right;">271</p> <p>1 BY MS. ADENDORFF: 2 Q. If you could take a look at the last 3 paragraph on that first page. 4 A. Uh-huh. 5 Q. Do you see where it says, "McDonald's 6 regrets having engaged PETA in dialogue and adopted 7 their supplier standards independently of PETA"? 8 Do you see that? 9 A. I do. 10 Q. Did you know that McDonald's regretted 11 having engaged in PETA by itself? 12 A. No. 13 Q. PETA? Okay. 14 MS. ADENDORFF: Let's take a look at -- mark 15 this exhibit. What number are we on? 16 DEPOSITION REPORTER: No. 23. 17 MS. ADENDORFF: 23. 18 (Exhibit 23 was marked for identification 19 and attached hereto.) 20 BY MS. ADENDORFF: 21 Q. Now, this is an article in The Dallas 22 Morning News from May 2002. 23 A. Uh-huh. 24 Q. It's Bates stamped CM00730871. 25 And do you see in the fifth paragraph that</p>	<p style="text-align: right;">273</p> <p>1 about implementing clear animal welfare standards in 2 part as a reaction to pressure from PETA; correct? 3 A. Correct. 4 MR. MURRAY: Object to the form of the 5 question. 6 BY MS. ADENDORFF: 7 Q. What was Safeway afraid of? Was it bad 8 press? 9 A. What were we afraid of, huh? We're not 10 afraid of anything necessarily. We were -- we were 11 trying to manage our reputation. 12 Q. Was PETA concerned -- was Safeway concerned 13 about PETA's possibly presenting shareholder 14 resolutions? 15 A. That was a consideration. 16 MS. ADENDORFF: Have this exhibit marked as 17 well. 18 DEPOSITION REPORTER: No. 24. 19 (Exhibit 24 was marked for identification 20 and attached hereto.) 21 BY MS. ADENDORFF: 22 Q. And this is a highly confidential document 23 Bates stamped SFWEGED00024897. And if you could, 24 take a minute to look over that document. 25 Do you recognize this letter?</p>

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Brian Dowling

April 11, 2014

70 (Pages 274 to 277)

<p style="text-align: right;">274</p> <p>1 A. You know, even though it was only 2009, 2 vaguely. I -- I believed especially as, you know, 3 it relates to the PAACO organization --</p> <p>4 DEPOSITION REPORTER: I'm sorry, especially 5 as it relates to the?</p> <p>6 THE WITNESS: PAACO, P-A-A-C-O, it's an 7 animal -- okay.</p> <p>8 BY MS. ADENDORFF:</p> <p>9 Q. And what do you recall about this letter?</p> <p>10 A. I don't recall very much of anything, at 11 all, frankly.</p> <p>12 Q. What do you recall about Safeway approaching 13 PAACO?</p> <p>14 A. Very little. I mean, the -- the contact 15 with PAACO was largely initiated by our folks in our 16 Denver buying office and -- and our, you know, Ginni 17 Littlefield and -- and that, that side of the 18 business.</p> <p>19 Q. Do you know if this letter was ever sent?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know who its intended recipients 22 were?</p> <p>23 MR. MURRAY: Objection to the form of the 24 question. Calls for speculation.</p> <p>25 THE WITNESS: Yeah, I -- I --</p>	<p style="text-align: right;">276</p> <p>1 BY MS. ADENDORFF:</p> <p>2 Q. Is it Safeway's position that animal welfare 3 should be a noncompetitive issue?</p> <p>4 MR. MURRAY: Object to any kind of questions 5 on this letter for a lack of foundation.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 BY MS. ADENDORFF:</p> <p>8 Q. I'm asking now just in general now about 9 Safeway's position and not about the contents of 10 this letter except in that the contents of the 11 letter might refresh your recollection about 12 Safeway's position.</p> <p>13 A. I would -- I would think that it would be a 14 noncompetitive issue. I mean, it's -- it's -- it 15 shouldn't be an issue as it relates to the treatment 16 of animals in the food production system rather than 17 a competitive issue. I don't -- I don't think it 18 should be. I think our company would -- would take 19 the position that it would not be a competitive 20 issue, that we would not use it to a competitive 21 advantage.</p> <p>22 Q. Looking at the last sentence of the second 23 paragraph, sorry, I guess that's all one sentence.</p> <p>24 A. Yeah.</p> <p>25 Q. Can you read the second paragraph there?</p>
<p style="text-align: right;">275</p> <p>1 MR. MURRAY: Lack of foundation.</p> <p>2 THE WITNESS: I don't.</p> <p>3 BY MS. ADENDORFF:</p> <p>4 Q. Do you know who drafted this letter?</p> <p>5 A. I -- I sure as heck hope I didn't, but I 6 don't remember that I did.</p> <p>7 Q. Do you see on the second page that it is 8 signed, "Sincerely, Safeway Inc."?</p> <p>9 A. I do.</p> <p>10 Q. Can you read for me the third sentence of 11 the letter which -- sorry, fourth sentence of the 12 letter which begins, "While our suppliers"?</p> <p>13 A. While our suppliers understand the 14 importance of the topic and have been responsible in 15 their responses, it's time for our industry to unite 16 in an effort" -- "in our efforts to make animal 17 welfare a noncompetitive issue."</p> <p>18 Q. Is it Safeway's position that animal welfare 19 should be a noncompetitive issue?</p> <p>20 MR. MURRAY: Objection to the form of the 21 question.</p> <p>22 THE WITNESS: You know, it's -- it's -- you 23 know, let me read it again here.</p> <p>24 Ask me the question again, please.</p> <p>25 ///</p>	<p style="text-align: right;">277</p> <p>1 A. "Since we all view welfare" -- excuse me -- 2 "welfare as a non-competitive issue, much like food 3 safety, I believe that by working together to 4 identify concerns and problem areas, we can better 5 determine a solution that will work for the entire 6 food chain and better position ourselves in animal 7 welfare discussions in the marketplace."</p> <p>8 Q. What marketplace position do you think 9 Safeway was referring to there?</p> <p>10 A. I don't know.</p> <p>11 MR. MURRAY: Objection to the form of the 12 question.</p> <p>13 BY MS. ADENDORFF:</p> <p>14 Q. Looking at the second to last paragraph on 15 this page, the letter refers to in the first 16 sentence "to start building the foundation for a 17 unified industry animal welfare plan," and then it 18 lists a variety of retailers that Safeway has 19 identified to help them in --</p> <p>20 DEPOSITION REPORTER: I'm sorry, can you 21 start that one again.</p> <p>22 BY MS. ADENDORFF:</p> <p>23 Q. "Industry animal welfare plan." And then 24 the letter goes on to identify Safeway, SuperValu, 25 HEB, Kroger, Wal-Mart, and Publix as -- and it says,</p>

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Brian Dowling

April 11, 2014

71 (Pages 278 to 281)

<p style="text-align: right;">278</p> <p>1 "leading firms to start building a foundation for" 2 that plan. 3 Do you see that sentence I'm -- 4 A. I do see that. 5 Q. -- talking about? 6 A. Yes. 7 Q. And are Safeway super -- excuse me. 8 Are SuperValu, HEB, Kroger, Wal-Mart, and 9 Publix Safeway competitors? 10 A. They are. But Publix is not a competitor. 11 We don't compete directly with them. 12 Q. Together, do these stores make up some of 13 the largest supermarkets in the country? 14 MR. MURRAY: Objection. Vague. Calls for 15 speculation. 16 THE WITNESS: HEB is a regional competitor, 17 Publix is regional, but a large competitor, they 18 have 500 plus stores. I mean, I'm -- I'm just using 19 my own base knowledge, Kroger's obviously a -- it's 20 larger than Safeway, it has nearly double the number 21 of stores. Wal-Mart is Wal-Mart. 22 BY MS. ADENDORFF: 23 Q. Why would Safeway have targeted these stores 24 for its unified industry plan? 25 MR. MURRAY: Object to the form of the</p>	<p style="text-align: right;">280</p> <p>1 BY MS. ADENDORFF: 2 Q. Do you see at the top that this appears to 3 be an email from Cathy East to Jim Sheeran -- 4 A. Yes. 5 Q. -- in March 31st, 2009? 6 A. Yes. 7 Q. And they are referring to that PAACO 8 organization animal welfare meeting? 9 A. Yes. 10 Q. And do you see the second sentence where it 11 says "PAACO is trying to create a noncompete in this 12 area and put everyone on the same page"? And then 13 it says, "I would hate for the others to show up and 14 we do not." 15 Did Safeway want to be a part of any 16 noncompete in the animal welfare area? 17 MR. MURRAY: Object to the form of the 18 question. And he's not designated on this topic. 19 THE WITNESS: Yeah. I -- yeah, I'm not -- 20 I'm not the expert on PAACO and -- and what we were 21 doing with PAACO. 22 BY MS. ADENDORFF: 23 Q. Was Safeway's goal in 2009 to work with 24 others in the industry to come up with a unified 25 animal welfare plan?</p>
<p style="text-align: right;">279</p> <p>1 question that Safeway did anything. This letter is 2 not addressed to any particular person, it's 3 unsigned, and there's a lack of foundation as to it. 4 BY MS. ADENDORFF: 5 Q. Why would Safeway have believed that these 6 stores would make good partners for its unified 7 industry animal welfare plan as it represents in 8 this sentence? 9 MR. MURRAY: Same objection. 10 THE WITNESS: I think obviously because 11 the -- the companies represented there are -- and do 12 a lot of -- a lot of business in retail grocery 13 space. They cover a chunk of almost the entire -- 14 entire country. 15 MS. ADENDORFF: Mark this as Exhibit 25. 16 (Exhibit 25 was marked for identification 17 and attached hereto.) 18 BY MS. ADENDORFF: 19 Q. And this is a highly confidential document 20 Bates stamped SFWEGED00039873. And do you see at 21 the top that this appears to be -- 22 MR. MURRAY: Well, let him read it. It's 23 three pages. 24 THE WITNESS: Okay. Yes. 25 ///</p>	<p style="text-align: right;">281</p> <p>1 MR. MURRAY: Same objection. He's not 2 designated on this topic. 3 He can answer, if he knows. 4 THE WITNESS: I -- I don't know. 5 Can I just -- I'll comment, just I don't -- 6 that -- that the conversations, we -- we had some 7 conversations about PAACO and -- and Ginni's 8 participation in PAACO meetings. But it was -- it 9 was sort of out of my area of expertise as to sort 10 of, you know, exactly what they did and how they did 11 what they do and -- and I was -- I, more often than 12 not, deferred to Cathy and Jim and it related to 13 Ginni's participation in -- in PAACO's activities. 14 MS. ADENDORFF: Mark this as Exhibit 26. 15 (Exhibit 26 was marked for identification 16 and attached hereto.) 17 MR. MURRAY: Are you -- you can't show him 18 this. This is a Kroger document, it's a 19 competitor's. 20 MR. FONTECILLA: He signed a protective 21 order. 22 MS. ADENDORFF: Yeah. 23 MR. MURRAY: But don't they say the 24 documents that you've been a party to you can see? 25 I mean, this is a --</p>

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Brian Dowling

April 11, 2014

72 (Pages 282 to 285)

<p style="text-align: right;">282</p> <p>1 MS. ADENDORFF: Things that you might have 2 knowledge of the subject matter and I've already 3 established that he was monitoring FMI and industry 4 publications that had to do with animal welfare. 5 This is an FMI press release. 6 MR. MURRAY: Okay. 7 BY MS. ADENDORFF: 8 Q. Have you ever seen this press release 9 before? 10 MR. MURRAY: I will -- I'm going to reserve 11 on this thing. I'll let you ask questions on it, 12 but we may -- we may pull this back when I -- I've 13 considered the implications of this. There's a 14 protective order. 15 BY MS. ADENDORFF: 16 Q. Have you ever seen this FMI press release 17 before? 18 A. Let me just look at it here, please. 19 You know, I -- I -- I probably saw it in 20 '01, but I -- I don't remember. I mean I -- I -- 21 you know, I probably did see it in some form. I 22 seem to recall we saw a version of some of this 23 earlier here, but... 24 Q. And we've already established that you knew 25 that in 2001, FMI formally adopted an animal welfare</p>	<p style="text-align: right;">284</p> <p>1 A. There were -- there were, I think from some 2 of these previous documents, indication that there 3 were members of our team that were -- were engaged 4 in some of this, but not me. 5 Q. Let's take a look at No. 2 here. 6 A. Uh-huh. 7 Q. No. 2, can you read that out loud? 8 A. FMI -- 9 Q. The first page. 10 A. FMI will work cooperatively with its 11 counterparts in the food industry to promote 12 production best practices for each species that will 13 strengthen food quality and safety and ensure animal 14 well-being at every step of the production process. 15 Q. And is that what Safeway believed that FMI 16 animal welfare standards did? 17 MR. MURRAY: Object to the form of the 18 question. Calls for speculation. 19 THE WITNESS: Ask your question again, 20 please. 21 BY MS. ADENDORFF: 22 Q. Is that what Safeway believed that FMI 23 standards did? 24 MR. MURRAY: Same objection. 25 THE WITNESS: Yeah. I -- I don't know. I</p>
<p style="text-align: right;">283</p> <p>1 policy; correct? 2 A. Correct. 3 Q. And was Safeway's goal at that time that all 4 retailers would collectively adopt FMI's animal 5 welfare standards? 6 MR. MURRAY: Object to the form of the 7 question. Beyond the scope of this witness' 8 designation. 9 THE WITNESS: It is beyond the scope of 10 my -- in '01, I -- I wasn't engaged in -- in this, 11 so, yeah, it's beyond my scope. 12 BY MS. ADENDORFF: 13 Q. Was Safeway pushing FMI to adopt animal 14 welfare standards so that others in the industry 15 would also adopt FMI standards? 16 A. It was not -- well, again, it's beyond, you 17 know, again, I'm -- my expertise is in dealing 18 with -- expertise -- my -- my experience is in 19 dealing with outside groups as it related to animal 20 welfare and managing that activity. But were we, 21 you know, pushing other retailers that, you know, 22 again, that's -- that's beyond my scope of 23 expertise. 24 Q. Was FM- -- was Safeway working with FMI in 25 order to develop a unified industry plan?</p>	<p style="text-align: right;">285</p> <p>1 really don't know. 2 BY MS. ADENDORFF: 3 Q. But Safeway endorsed those guidelines; 4 correct? 5 A. Yes. 6 MS. ADENDORFF: I'll mark this as 7 Exhibit 27. 8 (Exhibit 27 was marked for identification 9 and attached hereto.) 10 BY MS. ADENDORFF: 11 Q. Do you recognize -- have you ever seen this 12 press release before? 13 A. I -- I probably have seen this, yes, but I'm 14 not immediately recalling. But, yes, I probably 15 have seen it. 16 Q. And do you recognize the FMI logo at the top 17 of the page? 18 A. I do. 19 Q. And do you recognize that NCCR logo? 20 A. Yes. 21 Q. And who is NCCR? 22 A. Restaurant Association National Counsel of, 23 you know, it's a restaurant association. 24 Q. And did you understand that FMI and NCCR 25 worked together on animal welfare?</p>

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Brian Dowling

April 11, 2014

73 (Pages 286 to 289)

<p style="text-align: right;">286</p> <p>1 A. I was aware of that, yes. 2 Q. Do you know why they worked together on 3 animal welfare? 4 A. Well, I think -- I think it was because, you 5 know, the restaurant folks had previous experience 6 dealing with these issues more, you know, sort of 7 visibly than -- than the food industry. I mean, 8 they had -- they had had their -- their -- they 9 were, you know, had interaction with the -- the 10 activist groups much earlier than we did, and I 11 think that's why there was a connection between the 12 two. 13 Q. Can you look at No. 4 underneath "Program 14 Components," so that should be on the second page. 15 A. Okay. 16 Q. And it says, "Distribute the set of 17 expectations as voluntary recommendations for retail 18 companies to adopt and use in their discussions with 19 current and future suppliers." 20 Did Safeway understand at the time that that 21 was FMI's goal in developing the guidelines? 22 A. I don't know. I really don't know what... 23 Q. Did Safeway understand that FMI's 24 suggestions would be communicated to suppliers? 25 MR. MURRAY: Objection. Calls for</p>	<p style="text-align: right;">288</p> <p>1 A. I think the answer is yes. 2 Q. And does it believe that it shares that goal 3 with those other groups? 4 MR. MURRAY: Objection. Calls for 5 speculation. 6 THE WITNESS: Yeah, I would be speculating 7 as it relates to the other groups. Are you 8 referring to, like, the restaurant group? 9 BY MS. ADENDORFF: 10 Q. Correct. 11 A. Or -- 12 Q. And the other -- and other grocery stores. 13 MR. MURRAY: Same objection. 14 THE WITNESS: Yeah, I mean, I can't speak 15 for the other companies and the other organizations. 16 BY MS. ADENDORFF: 17 Please look at the second paragraph. It 18 says, "The issues covered in this report are 19 important and complicated. Some recommendations 20 contained within this report have economic 21 implications. Some require an implementation 22 timetable because they cannot be accomplished 23 immediately." 24 You said that you -- you believe you have 25 seen this -- you saw this report at the time;</p>
<p style="text-align: right;">287</p> <p>1 speculation. 2 THE WITNESS: Yeah, I -- I would only be 3 speculating. I don't know. I don't know. 4 DEPOSITION REPORTER: 28. 5 (Exhibit 28 was marked for identification 6 and attached hereto.) 7 MS. ADENDORFF: Mark this as Exhibit 28. 8 BY MS. ADENDORFF: 9 Q. A version of this might already be an 10 exhibit, but this is, at least, a standalone copy of 11 the June 2002 report from FMI and NCCR on animal 12 welfare. And this is Bates stamped CM00180840. 13 And have you seen this document before? 14 A. I probably have, yes. I... 15 Q. Can you read the first sentence of the third 16 paragraph there. 17 A. The first sentence of the third paragraph. 18 Q. Uh-huh. 19 A. "Retailers, animal welfare experts, animal 20 welfare advocates, producers, processors, and the 21 public share the common goal that all animals used 22 in agricultural production be cared for in a manner 23 that takes into account their daily well-being and 24 health." 25 Q. Does Safeway share that goal?</p>	<p style="text-align: right;">289</p> <p>1 correct? 2 A. I -- yes. A long time ago, yeah. 3 Q. So was Safeway aware that FMI believed there 4 were economic implications of the animal welfare 5 programs? 6 MR. MURRAY: Objection. It's vague and 7 ambiguous. And it calls for speculation. 8 THE WITNESS: Ask the question again, 9 please. 10 BY MS. ADENDORFF: 11 Q. Was Safeway aware that FMI was telling its 12 members that there were economic implications of the 13 animal welfare program? 14 A. I -- 15 MR. MURRAY: Same objection. 16 THE WITNESS: Yeah. I would be -- I don't 17 know. I -- I'd... 18 BY MS. ADENDORFF: 19 Q. Turn to page 2, and look at that first 20 bullet point. Can you read that for me? 21 A. "Consistency across the U.S. retail sector." 22 Q. And as we've discussed, one of the goals of 23 the FMI program was consistently across the U.S. 24 retail sector; correct? 25 MR. MURRAY: Object to the form of the</p>

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Brian Dowling

April 11, 2014

74 (Pages 290 to 293)

<p style="text-align: right;">290</p> <p>1 question. It mischaracterizes his prior testimony. 2 BY MS. ADENDORFF: 3 Q. Is that correct, that that's listed here as 4 one of FMI's goals? 5 A. It's listed as a goal, yes. 6 Q. And did Safeway, as you said, work with FMI 7 in order to achieve an industrywide animal welfare 8 standard? 9 A. Again, I -- I think you're -- you're -- I 10 mean, this is where my -- my knowledge specifically 11 of what it -- in this timeframe, you know -- you 12 know, I would and as to what Safeway's position was 13 as it related -- that's -- that where I would be. 14 You know -- I mean, I think, you know, you are both 15 making the assumption that -- that I -- I am Safeway 16 and that I know every step of the way as to what we 17 would have been thinking along and that's not 18 necessarily true. I mean, I -- so long answer to 19 short question, I'm not sure I -- I know. 20 Q. But you are testifying here as Safeway's 21 designee -- 22 A. I am. 23 Q. -- about its relationships with outside 24 organizations, such as FMI; correct? 25 A. With animal welfare groups. Right.</p>	<p style="text-align: right;">292</p> <p>1 (Feedstuffs, December 3rd, 2001), is to prevent 2 individual grocery and restaurant companies from 3 getting 'picked off' one by one by animal 4 welfare" -- excuse me -- "animal rights/welfare 5 activist groups -- especially PETA -- that are 6 threatening confrontations and other negative 7 attention if those companies don't hand out rigorous 8 animal husbandry rules for suppliers. 9 Q. And you understood from Karen Brown that FMI 10 was trying to prevent individual companies from 11 being picked off by PETA; correct? 12 A. That's correct. 13 Q. And was it Safeway's strategy to work 14 through FMI to avoid being picked off by PETA? 15 MR. MURRAY: Objection to the 16 characterization. 17 THE WITNESS: Would you ask the question 18 again, please? 19 BY MS. ADENDORFF: 20 Q. Was it Safeway's strategy to work through 21 FMI to avoid being picked off by PETA? 22 MR. MURRAY: Same objection. 23 THE WITNESS: Yeah. It's -- that was, 24 yeah -- we were trying to figure out what to do. We 25 weren't necessarily trying to work through FMI. We</p>
<p style="text-align: right;">291</p> <p>1 MS. ADENDORFF: This will be Exhibit 29. 2 (Exhibit 29 was marked for identification 3 and attached hereto.) 4 BY MS. ADENDORFF: 5 Q. Are you familiar with Feedstuffs? 6 A. I am. 7 Q. What is Feedstuffs? 8 A. It's a -- it's a food production trade 9 magazine. 10 Q. And do you -- 11 A. I sort of -- I don't read it regularly, but 12 I read it occasionally. 13 Q. Do you see at the top of Exhibit 29 it says, 14 www.feedstuffs.com? 15 A. Yes. 16 Q. Is -- I'll represent that this is an article 17 from Feedstuffs from March 4th, 2002. And can you 18 look at the third paragraph, and can you read that 19 sentence for me, the first sentence of the third 20 paragraph. 21 A. "The concept" -- starting with "The 22 concept"? 23 Q. Uh-huh. 24 A. "The concept, as explained last year by FMI 25 chief executive officer and president Tim Hammonds</p>	<p style="text-align: right;">293</p> <p>1 were trying to form a position, trying to form some 2 posture as to how we wanted to react to this as a 3 company. 4 BY MS. ADENDORFF: 5 Q. If other large retail grocers had been 6 picked off by PETA, would that have been a problem 7 for Safeway? 8 MR. MURRAY: Objection to the form of the 9 question. Calls for speculation. 10 THE WITNESS: Yeah. Yeah, I would be -- 11 yeah, I would be speculating, so I -- you want to 12 ask question again? I'm -- I'm sorry. 13 BY MS. ADENDORFF: 14 Q. If other large grocers like Kroger were 15 picked off by PETA, would that be a problem for 16 Safeway, for example, in trying to push for animal 17 welfare guidelines through FMI? 18 MR. MURRAY: Object to the form of the 19 question. 20 THE WITNESS: Yeah. That's -- it's sort of, 21 you know, a hypothetical in my view. I mean, I'm 22 not... 23 BY MS. ADENDORFF: 24 Q. Did you ever discuss the fear of getting 25 picked off by PETA with anyone other than Karen</p>

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Brian Dowling

April 11, 2014

75 (Pages 294 to 297)

<p style="text-align: right;">294</p> <p>1 Brown at FMI?</p> <p>2 A. The fear of getting picked off, I never --</p> <p>3 Q. Fear of companies being picked off by PETA.</p> <p>4 A. No. I never -- I don't -- I don't recall</p> <p>5 ever talking specifically with Karen about, you</p> <p>6 know, fear and being picked off and using those</p> <p>7 terms.</p> <p>8 Q. Did you ever discuss with anyone other than</p> <p>9 Karen Brown a concern that other groceries would</p> <p>10 deal with PETA one-on-one? Other than Karen Brown,</p> <p>11 did you discuss that with anyone else?</p> <p>12 A. I can't -- I can't recall whether or not I</p> <p>13 had other conversations. I think I would have --</p> <p>14 are you talking about external, outside of Safeway?</p> <p>15 Q. Yes.</p> <p>16 A. Yeah. I -- I can't recall whether or not I</p> <p>17 had.</p> <p>18 MS. ADENDORFF: This will be marked as</p> <p>19 Exhibit 30.</p> <p>20 (Exhibit 30 was marked for identification</p> <p>21 and attached hereto.)</p> <p>22 MS. ADENDORFF: I'm sorry. That's for him.</p> <p>23 BY MS. ADENDORFF:</p> <p>24 Q. And this is a document Bates stamped</p> <p>25 CM00731181, and it's an article written by two FMI</p>	<p style="text-align: right;">296</p> <p>1 read this first paragraph under the heading "Joint</p> <p>2 programme."</p> <p>3 A. "The animal activist groups continued to</p> <p>4 target chain restaurants for animal welfare protests</p> <p>5 and campaigns."</p> <p>6 The rest of the paragraph?</p> <p>7 Q. Uh-huh.</p> <p>8 A. "The food service companies were being</p> <p>9 pulled into a competitive cycle whereby each company</p> <p>10 had to do something different from the next to</p> <p>11 alleviate the public attention being directed at</p> <p>12 them and their customers. The food industry was</p> <p>13 concerned that such an approach could lead to</p> <p>14 actions that were not based" -- "not science-based</p> <p>15 and potentially detrimental to animal welfare.</p> <p>16 Therefore, in June 2001," the Food Marketing</p> <p>17 Institute, or "FMI, and the NCCR joined the parallel</p> <p>18 efforts" -- excuse me -- "joined their parallel</p> <p>19 efforts in making this decision, the two</p> <p>20 companies" -- excuse me -- "the two organizations</p> <p>21 considered the advantages of a single industry</p> <p>22 approach."</p> <p>23 Q. Does that explain to you -- does that put</p> <p>24 into words why Safeway would have preferred an</p> <p>25 industry standard program?</p>
<p style="text-align: right;">295</p> <p>1 employees, Karen Brown and Jill Hollingsworth, in</p> <p>2 2005 about FMI's animal welfare standards.</p> <p>3 And you've already testified that you're</p> <p>4 familiar with Karen Brown and Jill Hollingsworth;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Can you read the last sentence of this</p> <p>8 second paragraph that starts with, "However."</p> <p>9 A. "However, because of the visibility, easy</p> <p>10 access, and name recognition of food retailers,</p> <p>11 supermarkets and restaurants are often used as the</p> <p>12 catalyst to bring about awareness and change</p> <p>13 throughout the food chain."</p> <p>14 Q. Do you agree with that statement?</p> <p>15 A. I would --</p> <p>16 MR. MURRAY: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I -- I --</p> <p>19 MR. MURRAY: It's taken out of context.</p> <p>20 THE WITNESS: I -- I -- as I'd sort of</p> <p>21 indicated earlier about sort of our position in the</p> <p>22 marketplace, I would -- I would generally agree with</p> <p>23 that statement.</p> <p>24 BY MS. ADENDORFF:</p> <p>25 Q. And please turn to the third page. Can you</p>	<p style="text-align: right;">297</p> <p>1 MR. MURRAY: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: It -- it's -- in so many</p> <p>4 words, it -- it sort of gets at some of what was --</p> <p>5 was the issue.</p> <p>6 MS. ADENDORFF: This will be marked as</p> <p>7 Exhibit 31.</p> <p>8 (Exhibit 31 was marked for identification</p> <p>9 and attached hereto.)</p> <p>10 BY MS. ADENDORFF:</p> <p>11 Q. And this is a press release from June 2002</p> <p>12 from Kroger headlined, "Kroger to follow animal</p> <p>13 welfare standard," and it's Bates stamped</p> <p>14 CM00730889.</p> <p>15 Can you read the first sentence of this</p> <p>16 article.</p> <p>17 A. "The Kroger Company apparently has preempted</p> <p>18 a boycott and other protests by" the -- "by People</p> <p>19 for the Ethical Treatment of Animals by announcing</p> <p>20 its support for soon-to-be-released animal welfare</p> <p>21 standards."</p> <p>22 Q. Are you aware that Kroger also adopted the</p> <p>23 FMI animal welfare standards to preempt protests</p> <p>24 from PETA?</p> <p>25 A. I'm not necessarily aware of that. I would</p>

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Brian Dowling

April 11, 2014

76 (Pages 298 to 301)

<p style="text-align: right;">298</p> <p>1 have to think back to 12 years ago to what they, you 2 know. But I probably would have seen an 3 announcement or I probably would have seen the story 4 as it ran, wherever this ran, the Scripps Howard, 5 the papers.</p> <p>6 Q. At the time you probably would have seen 7 this?</p> <p>8 A. I probably would have.</p> <p>9 MR. MURRAY: Objection.</p> <p>10 BY MS. ADENDORFF:</p> <p>11 Q. Did you ever discuss the threat that PETA 12 posed with anyone from Kroger?</p> <p>13 A. I may have had, but I -- I can't recall. I 14 may have had conversations with Lynn Marmer at 15 Kroger about animal welfare and PETA, interactions 16 with PETA.</p> <p>17 Q. Do you recall speaking with anyone else at 18 any other competitors about your concerns about 19 PETA?</p> <p>20 A. No. No.</p> <p>21 Q. Did you know that PETA was putting pressure 22 on other grocery stores besides Safeway?</p> <p>23 A. We were focused on us. We -- we were -- and 24 feeling the pressure ourselves and generally not 25 tuned into exactly what was happening elsewhere.</p>	<p style="text-align: right;">300</p> <p>1 on with -- with our company on a broad range of 2 fronts, and, you know, I think, you know, so I 3 wouldn't be surprised if I -- if I didn't see this 4 particular story. I might have. I wasn't getting 5 LexisNexis back then. I wasn't getting Google 6 alerts.</p> <p>7 We were not quite as -- you know, but, you 8 know, we had a lot happening and this was just one 9 of many issues that we were dealing with. We were 10 dealing with labor issues and I was deeply engaged 11 in a lot of that. So I wouldn't be surprised if I 12 would have missed this with Albertson's, less so 13 with Kroger because Kroger, we'd had some 14 conversations with Kroger about animal welfare. 15 but -- but not as I recall with Albertson's.</p> <p>16 MS. ADENDORFF: Speaking of labor issues, 17 this is Exhibit 33. Yeah, this is 33. Mark this as 18 33. 19 (Exhibit 33 was marked for identification 20 and attached hereto.)</p> <p>21 BY MS. ADENDORFF:</p> <p>22 Q. And this is a Thomson-Reuters article from 23 2011 about a case called "California, ex rel. Harris 24 versus Safeway Inc., et al."</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">299</p> <p>1 We -- we had a sense that -- that there was being 2 pressure exerted with others, including Kroger, 3 but -- but we were pretty inwardly focused, you 4 know.</p> <p>5 MS. ADENDORFF: This is Exhibit 32. 6 (Exhibit 32 was marked for identification 7 and attached hereto.)</p> <p>8 BY MS. ADENDORFF:</p> <p>9 Q. And this document is a press release about 10 Albertson's --</p> <p>11 MR. MURRAY: Albertson's, Inc.</p> <p>12 BY MS. ADENDORFF:</p> <p>13 Q. Albertson's, Inc. from May 31st, 2002. The 14 headline is "Albertson's Applauds and Supports 15 Animal Welfare Guidelines Developed by the Food 16 Marketing Institute."</p> <p>17 Did you know in 2002 that Albertson's had 18 endorsed the FMI guidelines?</p> <p>19 A. I don't recall, frankly.</p> <p>20 Q. Would you have been monitoring these kinds 21 of announcements at the time?</p> <p>22 A. Less than you might imagine, you know. I 23 guess the only elaboration there, I just -- it's 24 sort of a broader is that at -- at this stage, you 25 know, I mean, you know, in -- in 2002, a lot going</p>	<p style="text-align: right;">301</p> <p>1 Q. Are you familiar with that lawsuit?</p> <p>2 A. No.</p> <p>3 Q. Let me give you a minute just to -- if you 4 just want to read through this article.</p> <p>5 A. Yeah, I would.</p> <p>6 Well, sure. Yeah. What -- this is 2011.</p> <p>7 Sorry. Okay. Wow, this is current, then. Okay.</p> <p>8 Yeah. Okay.</p> <p>9 Q. Do you have any recollection of this 10 lawsuit?</p> <p>11 A. I -- I do now that I read through it.</p> <p>12 Sorry. I'm just reading to myself. My apologies.</p> <p>13 Q. Are you aware that in this lawsuit 14 Safeway --</p> <p>15 MR. MURRAY: Let him finish reading it.</p> <p>16 THE WITNESS: Okay. I think I've read 17 enough to get the gist of it.</p> <p>18 BY MS. ADENDORFF:</p> <p>19 Q. Are you aware in this lawsuit that Safeway 20 is accused of working together with Kroger and 21 Albertson's anticompetitively?</p> <p>22 MR. MURRAY: Objection to the form of the 23 question. Way beyond this witness' designation.</p> <p>24 You can answer, if you know.</p> <p>25 THE WITNESS: I have a broad understanding</p>

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Brian Dowling

April 11, 2014

77 (Pages 302 to 305)

<p style="text-align: right;">302</p> <p>1 of a mutual strike assistance agreement as it 2 related to the Southern California negotiations 3 and -- and this issue. But it's -- it's very broad 4 brushed and it's not in depth.</p> <p>5 BY MS. ADENDORFF:</p> <p>6 Q. Did you know that there was a lawsuit 7 related to that issue?</p> <p>8 A. I -- I do know -- I did know there was a lawsuit related to that issue.</p> <p>10 Q. Does Safeway often work together with Kroger 11 on issues?</p> <p>12 MR. MURRAY: Objection to the form of the 13 question. It's overly broad.</p> <p>14 BY MS. ADENDORFF:</p> <p>15 Q. Issues affecting retail grocers such as the 16 issues that come up at FMI?</p> <p>17 MR. MURRAY: Same objection.</p> <p>18 THE WITNESS: Well, I mean, again, Kroger 19 serves on some of the same committees that -- that 20 Safeway does on -- on FMI committees. So in that 21 sense, you're talking about labor.</p> <p>22 I mean, in -- in places like Southern 23 California and other markets, you know, we will 24 negotiate contracts as a multi-employer bargaining 25 unit. In Southern California we're negotiating</p>	<p style="text-align: right;">304</p> <p>1 BY MS. ADENDORFF: 2 Q. When did you first learn about this 3 litigation, the eggs antitrust litigation? 4 A. Oh, gosh, probably going back, you know, hard to -- maybe two and a half, three years ago. 5 Q. Do you know if that was before or after the 6 lawsuit was filed? 7 A. It was after the lawsuit was filed, I 8 believe. 9 Q. And what do understand is the basis of 10 Safeway's lawsuit against the defendants? 11 A. Well -- 12 MR. MURRAY: Objection. In -- and in 13 answering that question, please don't reveal any 14 communications you've had with counsel. If you have 15 an independent recollection of what the lawsuit is 16 about, you can provide an answer. 17 THE WITNESS: Yeah. It's -- so your 18 question is what do I know about the lawsuit? 19 BY MS. ADENDORFF: 20 Q. What do you understand is the basis of 21 Safeway's allegations? 22 A. That my -- my layman's understanding is that 23 the allegation is that -- that egg suppliers joined 24 together to restrict egg production in order to</p>
<p style="text-align: right;">303</p> <p>1 contracts with the United Food and Commercial 2 Workers right now as a bargaining unit with 3 Albertson's and Kroger, and that's well within the 4 law and that's -- that's something that occurs in 5 multiple markets across the United States.</p> <p>6 BY MS. ADENDORFF:</p> <p>7 Q. And as you've already testified, you have 8 relationships with your counterparts at Kroger; 9 correct?</p> <p>10 MR. MURRAY: Objection to the form of the 11 question. It's vague.</p> <p>12 THE WITNESS: Yeah, I -- I don't -- I don't 13 talk to my counterpart at Kroger. I -- I can't 14 remember the last time I talked to my counterpart at 15 Kroger nationally. You know, regionally, you might 16 occasionally.</p> <p>17 There's, you know, in Southern California as 18 we have begun negotiations and begun some 19 communication around negotiations, I would have 20 contact with -- with my regional counterpart at 21 Kroger in Southern California talking about 22 communications in and around those negotiations. 23 That would be the most recent communication I had 24 with Kroger, but not at the national level. 25 / / /</p>	<p style="text-align: right;">305</p> <p>1 control the price and the -- the volume. That's my broad brush understanding. 2 Q. Do you understand that one of the 3 allegations is that the way they did so was through 4 implementing the UEP Certified program? 5 MR. MURRAY: And, again, in answering that 6 question, please don't reveal communications you've 7 had with counsel, and if in answering that question 8 you'd have to reveal those, do not -- 9 (Teleconference interruption.) 10 MR. MURRAY: But if you have any other basis 11 for answering that question, feel free to answer. 12 THE WITNESS: Yeah, I don't have any other 13 basis for answering that question other than 14 conversations. 15 BY MS. ADENDORFF: 16 Q. Have any non-lawyers at Safeway talked to 17 you about the Certified program since this lawsuit 18 started? 19 A. No. 20 Q. Do you know if Safeway has continued to 21 support the FMI guidelines up to the present day? 22 A. My understanding is that we do. I haven't 23 thought about it for a while. 24 Q. And you understand that the Certified</p>

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Brian Dowling

April 11, 2014

78 (Pages 306 to 309)

<p style="text-align: right;">306</p> <p>1 program, the UEP Certified program was part of those 2 animal welfare guidelines; correct?</p> <p>3 MR. MURRAY: Object to the form of the 4 question.</p> <p>5 THE WITNESS: Yes. I generally understand 6 that, yes.</p> <p>7 BY MS. ADENDORFF:</p> <p>8 Q. Do you think that Safeway still believes 9 that increasing the cage space for egg laying hens 10 is a -- improves the welfare of those hens?</p> <p>11 MR. MURRAY: Object to the form of the 12 question. It's beyond his designation.</p> <p>13 THE WITNESS: Yeah. I'm -- and, again, I'm 14 not -- I'm not the expert as it relates to -- to 15 that specific issue. I mean, I, you know, I'm -- 16 I'm a communications guy and a PR guy. And it -- 17 it's beyond my expertise.</p> <p>18 BY MS. ADENDORFF:</p> <p>19 Q. You testified earlier today that as part of 20 your job sitting on Safeway's Animal Welfare 21 Committee that it was Safeway's conclusion that cage 22 space for egg laying hens was a real issue; correct?</p> <p>23 MR. MURRAY: Object to the form of the 24 question. It mischaracterizes his testimony. 25 You can answer.</p>	<p style="text-align: right;">308</p> <p>1 A. Yeah -- 2 MR. MURRAY: Same objection. It's beyond 3 his designation. 4 You can answer.</p> <p>5 THE WITNESS: Yeah. I -- I just -- yeah, I 6 mean, I think -- and, again, this is the -- the 7 whole egg piece is -- is one element of -- of our 8 position sort of on -- on animal welfare issues. 9 It's -- it's the -- it -- it would be the place 10 where I have sort of the -- the least expertise and 11 the least understanding and that -- that's -- that 12 puts me at a disadvantage obviously, and it -- but 13 it's -- so I'm not -- I'm not the best person to 14 ask.</p> <p>15 BY MS. ADENDORFF:</p> <p>16 Q. As part of your involvement with Safeway's 17 animal welfare policies, do you know of any change 18 in Safeway's animal welfare policies since 2008 in 19 terms of no longer feeling that cage space is an 20 important issue for the welfare of hens?</p> <p>21 A. I'm not aware -- 22 MR. MURRAY: Objection to the form of that 23 question. It's vague and ambiguous. And beyond the 24 scope of this witness' designation. 25 ///</p>
<p style="text-align: right;">307</p> <p>1 THE WITNESS: Yes. I mean, we -- we 2 concluded that the cage space issue was an issue, 3 and, you know, our animal welfare experts indicated 4 that to us.</p> <p>5 BY MS. ADENDORFF:</p> <p>6 Q. And does -- does that continue to be 7 Safeway's position, that that's an issue?</p> <p>8 MR. MURRAY: Object. Object to the form of 9 the question. It's beyond his designation.</p> <p>10 THE WITNESS: It is beyond my expertise.</p> <p>11 BY MS. ADENDORFF:</p> <p>12 Q. Has Safeway changed its understanding of the 13 cage space issue, that you know of?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Is Safeway's corporate position that the 16 Certified program improves the animal welfare of 17 hens?</p> <p>18 MR. MURRAY: Object to the form of the 19 question. And it's beyond his designation.</p> <p>20 THE WITNESS: Ask me the question again, 21 please.</p> <p>22 BY MS. ADENDORFF:</p> <p>23 Q. Is Safeway's corporate position that the UEP 24 animal welfare -- sorry, UEP Certified program improves the animal welfare of egg laying hens?</p>	<p style="text-align: right;">309</p> <p>1 BY MS. ADENDORFF:</p> <p>2 Q. Can you repeat your answer?</p> <p>3 A. I'm not aware of any change.</p> <p>4 Q. Do you know of any situation in which 5 Safeway has made requirements of the suppliers that 6 it believes are illegal?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been in a meeting with Safeway 9 business people, not with any lawyers, where Safeway 10 has considered pulling out of the FMI animal welfare 11 program --</p> <p>12 A. No.</p> <p>13 Q. -- or revoking its endorsement?</p> <p>14 A. No.</p> <p>15 Q. Have you ever heard the term 16 "Capper-Volstead"?</p> <p>17 A. I've heard the term.</p> <p>18 Q. What do you --</p> <p>19 A. And I've read it, some -- I've read it in a 20 document.</p> <p>21 Q. Where, do you have any recollection of 22 where?</p> <p>23 A. I think it was in the complaint. I -- I 24 seem to recall reading it in the complaint.</p> <p>25 Q. Have you ever heard of the term</p>

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Brian Dowling

April 11, 2014

79 (Pages 310 to 313)

<p style="text-align: right;">310</p> <p>1 "Capper-Volstead" outside of this litigation?</p> <p>2 A. No.</p> <p>3 Q. Has anyone from the FMI or UEP ever</p> <p>4 communicated to you that they were exempt from the</p> <p>5 antitrust laws?</p> <p>6 A. No.</p> <p>7 MS. ADENDORFF: I think that's all the</p> <p>8 questions that I have.</p> <p>9 MR. FONTECILLA: Can we take a break?</p> <p>10 MR. MURRAY: Yeah.</p> <p>11 THE VIDEOGRAPHER: We're going off the</p> <p>12 record. The time is 4:21 p.m.</p> <p>13 (Off the record.)</p> <p>14 THE VIDEOGRAPHER: This marks the end of</p> <p>15 Disk No. 4 in the deposition of Brian Dowling.</p> <p>16 (Off the record.)</p> <p>17 THE VIDEOGRAPHER: We're back on the record.</p> <p>18 The time is 4:31 p.m. This marks the beginning of</p> <p>19 Disk No. 5 in the deposition of Brian Dowling.</p> <p>20 (Exhibit 34 was marked for identification</p> <p>21 and attached hereto.)</p> <p>22 ///</p> <p>23 ///</p> <p>24 ///</p> <p>25 ///</p>	<p style="text-align: right;">312</p> <p>1 Q. This is -- Exhibit 34 is a letter from UEP</p> <p>2 to FMI on January 4 of 2002.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And have you seen this document before?</p> <p>6 A. No.</p> <p>7 Q. And were you aware that FMI, as part of its</p> <p>8 development of an industrywide animal welfare</p> <p>9 program, was engaged in discussions with producers</p> <p>10 and associations representing producers of different</p> <p>11 animal species in or around this time?</p> <p>12 A. I was generally aware that -- that FMI was engaged in those discussions, yes.</p> <p>14 Q. And were you aware that FMI was engaged in</p> <p>15 discussions with UEP in connection with its</p> <p>16 development of an industrywide animal welfare</p> <p>17 program as it related to egg production</p> <p>18 specifically?</p> <p>19 A. I would have been generally aware of that, but generally.</p> <p>21 Q. Did you ever receive any letters from UEP</p> <p>22 whether directly to you or indirectly to FMI and</p> <p>23 passed along to you through Safeway representatives</p> <p>24 that participated in FMI committees or -- or board</p> <p>25 meetings?</p>
<p style="text-align: right;">311</p> <p>1 EXAMINATION (Resumed)</p> <p>2 BY MR. FONTECILLA:</p> <p>3 Q. And, Mr. Dowling, I'm going to hand you</p> <p>4 what's been marked as Exhibit 34.</p> <p>5 A. Okay.</p> <p>6 Q. And this is a confidential document Bates</p> <p>7 stamped FMI-000927.</p> <p>8 Go ahead and take a minute to review that,</p> <p>9 please.</p> <p>10 A. Okay.</p> <p>11 Q. And just to refresh your recollection,</p> <p>12 Exhibit 16 is an FMI letter that you received in</p> <p>13 November of 2001 that attached the consumer</p> <p>14 brochure. And that was November 2001.</p> <p>15 A. Yep.</p> <p>16 Q. And then Exhibit -- and that was Exhibit 16.</p> <p>17 Exhibit 19 is the email that you exchanged with FMI</p> <p>18 and Lauren Marmer at Kroger.</p> <p>19 A. Lynn Marmer.</p> <p>20 Q. Lynn Marmer, excuse me.</p> <p>21 A. Right.</p> <p>22 Q. At Kroger, and that was February of 2002,</p> <p>23 just to give you the context of the timeframe that</p> <p>24 we were discussing earlier.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">313</p> <p>1 A. I -- I may have.</p> <p>2 Q. And what is your understanding of what</p> <p>3 discussions were being had between FMI and UEP</p> <p>4 around the time that FMI was developing an</p> <p>5 industrywide animal welfare program in early 2002?</p> <p>6 A. The only understanding I have is that they -- they were, you know, you talked about species, they were one of multiple sort of species organizations -- associations representing various species, including AMI or American Meat Institute and others --</p> <p>12 Q. But I'm asking specifically what your</p> <p>13 understanding was about discussions being had at</p> <p>14 that time between FMI and UEP.</p> <p>15 A. Yeah, I -- I broadly recall or generally recall that there were discussions between FMI and UEP, that's as much as I would know.</p> <p>18 Q. Was Safeway aware that UEP was engaged in</p> <p>19 discussions with FMI regarding changes to the UEP</p> <p>20 guidelines that existed at that time to accommodate</p> <p>21 FMI requests?</p> <p>22 A. Not that I'm aware of. There may have been -- again, referring to some of the other folks on the -- the QA side of our business, there may have been discussions going on, interactions with</p>

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Brian Dowling

April 11, 2014

80 (Pages 314 to 317)

<p style="text-align: right;">314</p> <p>1 FMI on that, that I wasn't aware of. 2 Q. And are you aware of any interactions 3 between FMI and UEP regarding information about the 4 cost of implementation of animal welfare standards 5 to egg suppliers around this time period? 6 MR. MURRAY: Objection. 7 THE WITNESS: I'm sorry. 8 MR. MURRAY: Okay. You can answer. 9 THE WITNESS: No, not to my knowledge. 10 (Exhibit 35 was marked for identification 11 and attached hereto.) 12 BY MR. FONTICILLA: 13 Q. I'm handing you what's been marked as 14 Exhibit 35. Go ahead and review that document, 15 Mr. Dowling. And for the record, this is a 16 confidential document, it's stamped FMI-000899. 17 A. Okay. Okay. 18 Q. And do you recognize this document? 19 A. No. 20 Q. This is a January 21st, 2002 letter from UEP 21 to Miss Karen Brown at the Food Marketing Institute. 22 Do you see that? 23 A. I see that, yes. 24 Q. And in her first sentence, she thanks -- or 25 I'm sorry, the author of the document at UEP thanks</p>	<p style="text-align: right;">316</p> <p>1 A. Yes. 2 Q. And which ones has Safeway attended? 3 A. Well, I -- between -- and -- and during that 4 time, I -- I think, you know, I -- we would -- we 5 would have attended all of those meetings, I 6 believe. I -- I don't know for sure. I -- there 7 may have been times where, you know, we may have 8 missed a meeting, I -- but it's -- it's an industry 9 gathering that, you know, that just everybody would 10 typically attend. I say everybody, meaning you 11 would have a representative from the company at 12 this, this meeting. 13 Q. And by everyone attend, you mean -- you -- 14 I'm sorry. FMI members? 15 A. FMI members, that's right. Yes. Sorry. 16 But -- but -- 17 Q. So most FMI members -- 18 MR. MURRAY: Wait. Wait. You cut him off. 19 He was still talking. 20 THE WITNESS: No, I -- there would be 21 typically a Safeway representative at some level at 22 this meeting. 23 BY MR. FONTICILLA: 24 Q. And how often are these meetings held? 25 A. I believe once a year.</p>
<p style="text-align: right;">315</p> <p>1 Miss Brown for inviting him to the FMI midyear 2 executive conference and also to extend thanks to a 3 Tim. 4 Do you see that? 5 A. Yes, I do. 6 Q. Do you have an understanding of who Tim at 7 FMI is? 8 A. Tim Hammonds. He's the CEO at FMI. 9 Q. And have you ever discussed, had any 10 discussions with Tim Hammonds? 11 A. I have not. Oh, oh, I've talked to 12 Tim Hammonds, I know -- I -- but not about this, not 13 about animal welfare. 14 Q. Okay. And do you have any understanding of 15 what the FMI midyear executive conference is? 16 A. Yes, I do. 17 Q. And what is the FMI midyear executive 18 conference? 19 A. It's a, sort of a leadership conference. My 20 recollection is it's a -- I've not attended ever, 21 but it's a -- they used to -- they now call it, I 22 believe, the midwinter conference. 23 Q. And does Safeway attend the FMI -- or since 24 1999, has Safeway attended FMI midyear executive 25 conferences or FMI midwinter executive conferences?</p>	<p style="text-align: right;">317</p> <p>1 Q. And did you testify that you had never 2 attended one of these? 3 A. I had not attended one of these meetings. 4 Q. Have you ever received a report orally or 5 written from one of your colleagues at Safeway who 6 attended this meeting? 7 A. No. That's -- I mean, not the way it 8 typically works. I mean, I -- no one would 9 typically come back and say, "Hey, by the way, 10 Brian, here's kind of" -- here's what -- or I would 11 not be on the receiving end of a report. It 12 would -- no is the answer, the short answer. 13 Q. Is Safeway aware of any discussions at FMI 14 midyear executive conferences about the adoption of 15 UEP guidelines as part of the FMI industrywide 16 animal welfare program? 17 A. I had -- I have never had any feedback from 18 anybody who attended a meeting at FMI, an executive 19 conference, where there was specific feedback about 20 a UEP matter. 21 Q. In the last paragraph -- 22 A. That I can -- that I can recall. 23 Q. And in the last paragraph of this first 24 page, it says, in the UEP letter to FMI, "Full 25 implementation and compliance to UEP's phase-in</p>

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Brian Dowling

April 11, 2014

81 (Pages 318 to 321)

<p style="text-align: right;">318</p> <p>1 program will hinge on whether your members request 2 compliance including an annual certification." 3 Do you see that? 4 A. I do. 5 Q. Did FMI ever tell Safeway that UEP had 6 conveyed to FMI that the phase-in program for the 7 animal welfare program that FMI was considering 8 would hinge on whether FMI's members would request 9 compliance, including an annual certification of 10 each member's egg suppliers? 11 A. Not to my knowledge. 12 Q. Did Safeway ever discuss any requests from 13 UEP to convey to its egg suppliers any message 14 regarding adoption of the UEP guidelines? 15 A. Not -- not to my knowledge. There -- there 16 may have been discussions with some of our other 17 team, I don't know, but not to my knowledge. 18 Q. And going back to Exhibit 34, which was the 19 other UEP letter, do you see at the top in a box a 20 message that says, "It is critically important that 21 FMI endorse UEP's animal welfare guidelines in order 22 to meet the proposed schedule of implementation. 23 Time is of the essence." 24 Do you see that? 25 A. I do.</p>	<p style="text-align: right;">320</p> <p>1 part of this. I don't know. That's all I can -- I 2 can recollect. 3 Q. And do you see on the -- on the second page 4 of this letter a paragraph starting with, "We 5 believe"? 6 A. Yes. 7 Q. It says, "We believe it is in the best 8 interest of UEP Members and FMI members to work 9 together in the implementation of these guidelines." 10 A. Yes. 11 Q. Do you see that? 12 A. I do. 13 Q. And it's referring to the UEP guidelines as 14 discussed in the previous paragraphs; right? 15 A. Yes. 16 Q. And was it Safeway's position around this 17 time of February of 2002, that it was in the best 18 interest of UEP members and FMI members to work 19 together in implementing the UEP guidelines? 20 MR. MURRAY: Object to the form of the 21 question. Beyond this witness' designation. 22 THE WITNESS: It -- it is beyond. I -- 23 that's not -- I -- I wouldn't know. I just would 24 not know specifically. 25 ///</p>
<p style="text-align: right;">319</p> <p>1 Q. Was a similar message regarding the proposed 2 schedule of implementation delivered to Safeway by 3 anyone at FMI? 4 A. Not to my knowledge. Not to me, not to -- 5 not that I'm aware of. 6 (Exhibit 36 was marked for identification 7 and attached hereto.) 8 BY MR. FONTICILLA: 9 Q. I'm handing you what's been marked as 10 Exhibit 36. Go ahead and take a minute to review 11 that, please. 12 A. Okay. 13 Q. Have you ever seen this document before? 14 A. Not -- I sound like a broken record, but not 15 to my recollection. I don't recall seeing this. I 16 may have in some form, you know, but... 17 Q. And why do you think you may have seen this 18 document? 19 A. I don't know. It just -- there's -- there's 20 some -- I -- as opposed to some of this other, I've 21 never seen this (indicating). I've never seen 22 either one of these two documents (indicating), but 23 there seems to be some piece of this that is 24 striking me as -- as something that I might have 25 seen, that's all. Maybe it's the Terrie Dort being</p>	<p style="text-align: right;">321</p> <p>1 BY MR. FONTICILLA: 2 Q. Do you ever recall any discussions or any 3 comments by anyone at FMI or Safeway regarding 4 whether it was in the best interest of UEP members 5 and FMI members to work together to implement the 6 UEP guidelines? 7 A. I don't recall. 8 Q. And did FMI -- did Safeway ever convey to 9 FMI that it was interested in working with UEP 10 members to implement the UEP guidelines? 11 A. I -- I've never communicated that. I'm not 12 aware of anybody else. 13 Q. Do you have an understanding of what the 14 term "litter disruption" in that paragraph refers 15 to? 16 A. I do not know what that means. 17 Q. And in the first page of this letter from 18 UEP, it's sent to Miss Brown at FMI; correct? 19 A. Yes. 20 Q. And it says it's also sent to Miss Terrie 21 Dort at NCCR; correct? 22 A. Yes. 23 Q. And it's discussing progress with the 24 components of UEP's animal husbandry guidelines in 25 preparation for meeting the needs of your members.</p>

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Brian Dowling

April 11, 2014

82 (Pages 322 to 325)

<p style="text-align: right;">322</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Did Safeway ever convey to FMI any needs</p> <p>4 regarding the UEP animal husbandry guidelines?</p> <p>5 A. I did not, I -- and I don't know whether or</p> <p>6 not anybody else from Safeway did. That may have</p> <p>7 happened, but I don't -- I have not.</p> <p>8 Q. And in the first checkmark there, under</p> <p>9 "meeting the needs of your members," it says, "In</p> <p>10 regard to space allowance, you recommend that all</p> <p>11 reference to mortality be taken out."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Are you aware of any recommendations made by</p> <p>15 FMI to UEP to change aspects of the UEP animal</p> <p>16 husbandry guidelines as they existed in or around</p> <p>17 February of 2002?</p> <p>18 A. I'm -- I'm not aware.</p> <p>19 Q. And later in that same checkmark, it -- it</p> <p>20 says, "We have done so with the endorsement with our</p> <p>21 Board Of directors," referring to adopting a</p> <p>22 recommended change in space allowance mortality</p> <p>23 references; right?</p> <p>24 MR. MURRAY: Object to the form of the</p> <p>25 question. It's vague, and...</p>	<p style="text-align: right;">324</p> <p>1 recommended change; correct?</p> <p>2 A. Correct.</p> <p>3 Q. And that change regarded a scheduled</p> <p>4 phase-in plan; right?</p> <p>5 A. Correct.</p> <p>6 Q. And then the third checkmark, it references</p> <p>7 a third recommendation made by Miss Brown or</p> <p>8 Miss Dort to UEP to change its UEP animal husbandry</p> <p>9 guidelines; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And in that instance, however, UEP indicates</p> <p>12 that it's still working on that particular -- on</p> <p>13 implementing that particular recommendation</p> <p>14 regarding auditing; right?</p> <p>15 A. That's correct.</p> <p>16 Q. And in the last one, it references another</p> <p>17 change regarding a retail version of UEP's</p> <p>18 guidelines recommended by Miss Brown or Miss Dort;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Was Safeway aware that Miss Brown was</p> <p>22 recommending to UEP to make any of these changes to</p> <p>23 UEP's animal husbandry guidelines in or around</p> <p>24 February of 2002?</p> <p>25 A. Again, for -- not to my knowledge. There</p>
<p style="text-align: right;">323</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Well, do you understand that in the first</p> <p>3 checkbox the letter is referencing a recommendation</p> <p>4 made by Miss Brown or Miss Dort to remove a</p> <p>5 reference to mortality under space allowance</p> <p>6 sections of the UEP animal husbandry guidelines?</p> <p>7 A. I see that.</p> <p>8 Q. And then the second sentence, you see where</p> <p>9 it says UEP says that it has complied with that</p> <p>10 recommendation with the endorsement of its board of</p> <p>11 directors.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. Do you have an understanding of whether UEP,</p> <p>15 at any time around February of 2002, made changes to</p> <p>16 its animal husbandry guidelines based on</p> <p>17 recommendations of Miss Brown or Miss Dort?</p> <p>18 A. I don't have any understanding of that or</p> <p>19 awareness of that.</p> <p>20 Q. And then in the second checkbox, it</p> <p>21 references another recommendation made to UEP to</p> <p>22 change its animal husbandry guidelines by Miss Brown</p> <p>23 or Miss Dort; correct?</p> <p>24 A. Yes. Correct.</p> <p>25 Q. And it also states that UEP completed that</p>	<p style="text-align: right;">325</p> <p>1 may have been, again, through other -- some other</p> <p>2 side of the company on the QA side, but not to my</p> <p>3 knowledge.</p> <p>4 Q. If you could refer, please, back to</p> <p>5 Exhibit 28. And these are the -- this is the "June</p> <p>6 2002 Report FMI-NCCR Animal Welfare Program."</p> <p>7 Do you see that?</p> <p>8 A. Uh-huh. Yes.</p> <p>9 Q. And if you flip to the third page, there's</p> <p>10 a document that starts titled "The Guidelines";</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it goes on for a few pages; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you understand this to be the FMI</p> <p>16 guidelines adopted by FMI related to animal welfare</p> <p>17 in or around 2002?</p> <p>18 A. I -- I do generally understand that, yes.</p> <p>19 Q. And these were the guidelines that Safeway</p> <p>20 referenced in its agreement with PETA on May 13th,</p> <p>21 2002, that it promised to adopt in -- in</p> <p>22 consideration for PETA removing its Shameway</p> <p>23 campaign; right?</p> <p>24 MR. MURRAY: Object to the form of the</p> <p>25 question.</p>

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Brian Dowling

April 11, 2014

83 (Pages 326 to 329)

<p style="text-align: right;">326</p> <p>1 THE WITNESS: These are -- these are -- yes, 2 these are the guidelines as -- as I recall. 3 BY MR. FONTECILLA: 4 Q. And you had testified earlier that Safeway 5 had seen those guidelines before agreeing with PETA 6 to adopt them on May 13th, 2002; correct? 7 A. That is correct. 8 Q. And if you look at the third page of this 9 document, please, at the bottom, there is a section 10 titled "Laying Hens." 11 Do you see that? 12 A. I do. 13 Q. And can you read the recommendation of the 14 first sentence, please? 15 DEPOSITION REPORTER: I'm sorry? 16 MR. FONTECILLA: "Laying Hens." 17 THE WITNESS: "FMI and NCCR recommend to 18 their members the 2002 guidelines of the United Egg 19 Producers (UEP) for use with their suppliers of eggs 20 and egg products." 21 BY MR. FONTECILLA: 22 Q. When first reviewing the guidelines, did 23 Safeway reference or review the UEP guidelines as 24 they existed at that time? 25 A. My --</p>	<p style="text-align: right;">328</p> <p>1 I don't -- I don't know. I mean, I -- I would be 2 speculating that if I were to try to answer it. 3 BY MR. FONTECILLA: 4 Q. So the previous series of exhibits 34, 35, 5 and 36 were UEP letters to FMI; correct? 6 A. Yes. 7 Q. And we saw that in those letters, FMI was 8 working with UEP since January of 2002 through 9 February of 2002 regarding the UEP guidelines; 10 correct? 11 A. Correct. 12 Q. And then here, in Exhibit 28, in the FMI 13 guidelines that were published in June 2002, it 14 states that "UEP has made significant progress on a 15 number of their most challenging issues." 16 Do you see that? 17 A. I -- 18 Q. On the laying hens section of page 3 of 19 Exhibit 28. 20 A. Yes. 21 Q. And these guidelines as -- as you read, 22 recommend that FMI members adopt the 2002 UEP 23 guidelines; correct? 24 A. Correct. 25 Q. And did Safeway agree to adopt those</p>
<p style="text-align: right;">327</p> <p>1 MR. MURRAY: Object to the form of the 2 question. 3 THE WITNESS: Again, it's -- our QA people, 4 I believe, were -- were better connected then -- to 5 this piece of it than -- than I was, but I believe 6 they were communicating with FMI through their 7 capacity, that's my understanding. 8 BY MR. FONTECILLA: 9 Q. And in the second paragraph, the second 10 sentence says, "During the past 12 months," meaning 11 June 2001 to June 2002; right? 12 A. Uh-huh. 13 Q. It says, "UEP has made significant progress 14 on a number of their most challenging issues, 15 including beak trimming, induced molting, space 16 allocation, handling, transportation, handling and 17 processing of spent hens, and euthanasia." 18 Do you see that? 19 A. I do. 20 Q. And do you understand that to mean that UEP 21 has been working with FMI to alter the UEP 22 guidelines as reflected in the previous exhibit? 23 MR. MURRAY: Object to the form of the 24 question. Calls for speculation. 25 THE WITNESS: Yeah. I -- it's -- again, I</p>	<p style="text-align: right;">329</p> <p>1 guidelines? 2 A. I believe we did. 3 Q. And do you remember the first time that 4 Safeway agreed to adopt those guidelines? 5 A. I believe it was in May of 2002. 6 Q. And that was in response to the pressure 7 that Safeway was receiving from PETA as we discussed 8 earlier; right? 9 MR. MURRAY: Object to the form of the 10 question. 11 THE WITNESS: There was a connection 12 obviously to -- to our interaction with PETA. 13 BY MR. FONTECILLA: 14 Q. And you also testified that Safeway reviewed 15 on its own independently the UEP guidelines as they 16 existed prior to adopting the FMI guidelines; right? 17 A. Members of our team would likely have done 18 that, yes. 19 Q. And we saw earlier that in -- in one of the 20 first exhibits we talked about how since 2001, 21 Safeway has actually been engaged with a Dr. Grandin 22 regarding animal welfare issues; correct? 23 A. That's -- that's right. 24 Q. And prior to adopting the guidelines, did 25 Safeway -- prior to adopting the FMI guidelines in</p>

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Brian Dowling

April 11, 2014

84 (Pages 330 to 333)

330	332
<p>1 May of 2002, did Safeway consult with Dr. Grandin 2 about the UEP guidelines?</p> <p>3 A. I -- my conversations with Temple Grandin, 4 again, a long time ago, were broader than that and 5 were -- were -- and so I couldn't tell you 6 specifically whether or not I specifically talked to 7 Temple Grandin about UEP guidelines, but it may have 8 come up during the conversations. But if you've 9 ever talked to Temple Grandin, a lot of stuff comes 10 up in conversation with Temple Grandin. She's a 11 fascinating woman, but it's -- there's a free flow 12 to that discussion, and so...</p> <p>13 Q. But do you recall specifically consulting 14 with Dr. Grandin regarding the UEP guidelines prior 15 to adopting -- prior to adopting the FMI guidelines, 16 excuse me, in May of 2002?</p> <p>17 MR. MURRAY: Objection. Asked and answered.</p> <p>18 THE WITNESS: Yeah, I -- yeah, I -- I may 19 have talked to her, but I don't recall specifically 20 talking to her about the UEP guidelines directly.</p> <p>21 BY MR. FONTECILLA:</p> <p>22 Q. And on the last page of the FMI-NCCR June 23 2002 report, there is a page listing FMI-NCCR expert 24 advisors.</p> <p>25 Do you see that?</p>	<p>1 phone? Did they --</p> <p>2 MR. FONTECILLA: Why don't we go off the 3 record.</p> <p>4 MR. MURRAY: Well, I don't know. We don't 5 have to go off the record, I was just -- is anyone 6 still on the phone?</p> <p>7 MR. FONTECILLA: It's off.</p> <p>8 THE VIDEOGRAPHER: We're going off the 9 record. The time is 4:59 p.m.</p> <p>10 (Off the record.)</p> <p>11 THE VIDEOGRAPHER: We're back on the record.</p> <p>12 The time is 5:00 p.m.</p> <p>13 (Exhibit 37 was marked for identification 14 and attached hereto.)</p> <p>15 BY MR. FONTECILLA:</p> <p>16 Q. Mr. Dowling, you have in front of you what's 17 been marked as Exhibit 37. This is a lengthy 18 document, but looking -- just kind of glimpsing 19 through it and looking at the cover, do you 20 recognize it?</p> <p>21 A. I believe I've seen this before, yes.</p> <p>22 Q. And these are the UEP animal husbandry 23 guidelines we've been referring to as the UEP 24 guidelines in 2002; correct?</p> <p>25 A. Correct.</p>
331	333
<p>1 A. I do.</p> <p>2 Q. And it lists Adele Douglass, David Fraser, 3 Gail Golab, Temple Grandin, Joy Mench, Joe 4 Mac Regenstein, Janice Swanson.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And some of these advisors to FMI-NCCR were 8 the same advisors that Safeway was consulting with 9 in connection with animal welfare issues; right?</p> <p>10 MR. MURRAY: Objection. Vague as to time.</p> <p>11 THE WITNESS: Eventually we -- we brought in 12 Joy Mench and Janice Swanson, but...</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. At the time that this report was issued in 15 June of 2002, which one of these advisors had 16 Safeway consulted with?</p> <p>17 A. Temple Grandin in 2002, I -- as I recall.</p> <p>18 Q. And was Safeway aware at this time that some 19 of these advisors had also advised UEP in developing 20 the UEP guidelines?</p> <p>21 A. I can't recall specifically, not -- I -- I 22 just don't remember. There may -- again, may have 23 been members on the QA side that were -- were more 24 tuned into it than I was.</p> <p>25 MR. MURRAY: Do we still have anyone on the</p>	<p>1 Q. And you testified that you had seen these 2 first in or around 2002 in connection with the FMI 3 development of its industrywide animal welfare 4 program; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And if you'll please go to the third page of 7 this document, you will see a section titled 8 "Independent Scientific Advisory Committee."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Was Safeway aware when it adopted the FMI 12 guidelines in May of 2002, who the members of UEP's 13 Independent Scientific Advisory Committee were?</p> <p>14 A. I was not.</p> <p>15 Q. Was anyone else at Safeway aware?</p> <p>16 A. I -- I don't know.</p> <p>17 MR. MURRAY: Objection. Beyond the scope.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 BY MR. FONTECILLA:</p> <p>21 Q. Did FMI ever communicate to Safeway that 22 some of the members of the UEP Independent 23 Scientific Advisory Committee were also the same 24 members that it was consulting with in connection 25 with the development of the FMI-NCCR guidelines?</p>

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Brian Dowling

April 11, 2014

85 (Pages 334 to 337)

<p style="text-align: right;">334</p> <p>1 A. It's -- did FMI ever communicate that to -- 2 Q. Safeway, yes. 3 A. Not that I -- not to my knowledge. 4 Q. And if you look at the next page, there is a 5 section titled "Recommendations and Guidelines." 6 Do you see that? 7 A. I do. 8 Q. Are you familiar with the recommendations 9 and guidelines as they apply to housing and space 10 allowance? 11 A. Generally, yes. 12 Q. And what is your understanding of the UEP 13 guidelines and recommendations related to housing 14 and space allowance? 15 A. Well, it's -- it's limited. Yeah, I -- it 16 would be a very broad understanding of -- of sort of 17 the housing issue and the space allowance issue, but 18 I -- but just that it's -- that it's an issue and 19 that there were recommendations, but beyond that 20 specifically, I don't have a lot of in-depth 21 knowledge. 22 Q. And who else at Safeway in or around the 23 time that Safeway adopted the FMI guidelines in May 24 of 2002, reviewed or had some knowledge, to the best 25 of your understanding, about the recommendations and</p>	<p style="text-align: right;">336</p> <p>1 A. I do. 2 Q. At the time that you reviewed these 3 documents for the first time through Safeway's 4 adoption of the FMI guidelines in May of 2002, what 5 was Safeway's understanding of the compliance 6 aspects -- excuse me -- of the UEP guidelines? 7 MR. MURRAY: Objection. It's beyond the 8 scope of this witness' designation. He can answer 9 if he knows. 10 THE WITNESS: I don't know. 11 BY MR. FONTECILLA: 12 Q. Did Safeway ever discuss with FMI or any 13 other third parties the compliance aspect of the UEP 14 guidelines in or around 2002? 15 A. I -- I did not. There may have been others 16 at Safeway that did, but I did not. 17 Q. Who at Safeway at that time would have had 18 the responsibility of discussing with third parties 19 the compliance aspects of the UEP guidelines in 20 2002? 21 A. Probably it would have been our QA people. 22 Q. And was Safeway aware prior to adopting the 23 FMI guidelines in May of 2002 that the compliance, 24 the UEP compliance guidelines included a 25 certification aspect?</p>
<p style="text-align: right;">335</p> <p>1 guidelines as to housing and space allowance? 2 MR. MURRAY: Objection to the form of the 3 question. 4 THE WITNESS: Again, I -- it's not my area 5 of expertise. There may have been people on the QA 6 side, again, who -- who would have had much greater 7 knowledge here. 8 BY MR. FONTECILLA: 9 Q. And what review process did Safeway 10 undertake to evaluate the recommend -- the UEP 11 recommendations and guidelines of housing and space 12 allowance prior to adopting the FMI guidelines in 13 May of 2002? 14 A. You know -- you know, I -- I couldn't tell 15 you for sure. 16 Q. Are you aware of any -- 17 A. It's been a long time. 18 Q. Are you aware of any studies or research or 19 evaluation of the UEP housing and space allowance 20 recommendations and guidelines by Safeway prior to 21 the adoption of the FMI guidelines in May of 2002? 22 A. I am not. 23 Q. And if I look at the last page of -- sorry, 24 page 13 of Exhibit 37, do you see a section 25 titled "Compliance"?</p>	<p style="text-align: right;">337</p> <p>1 MR. MURRAY: Beyond -- objection. Beyond 2 the designation of this witness. He can answer if 3 he knows. 4 THE WITNESS: I -- I don't know. 5 BY MR. FONTECILLA: 6 Q. Do you see on the last page of this 7 document, page 14, there is a section titled 8 "Acknowledgements." 9 Do you see that? 10 A. I do. 11 Q. And the last one there states that the 12 United Egg Producers wishes to thank FMI and NCCR 13 for reviewing these guidelines. 14 Do you see that? 15 A. I do. 16 Q. And that's because FMI and NCCR reviewed the 17 UEP guidelines prior to their release; is that 18 right? 19 A. I think that's -- that looks like it was 20 what happened, yes. 21 Q. And did Safeway also review the UEP 22 guidelines prior to their release? 23 A. I don't know. There may have been. I -- 24 but it's, again, beyond my scope. 25 Q. And when you say beyond your scope, what do</p>

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Brian Dowling

April 11, 2014

86 (Pages 338 to 341)

<p style="text-align: right;">338</p> <p>1 you mean?</p> <p>2 A. Well, I mean, I -- again, just -- this --</p> <p>3 this sort of level of detail was a, you know, was --</p> <p>4 I was not getting into this level of detail as it</p> <p>5 relates to UEP guidelines and -- and eggs.</p> <p>6 Q. And when you say not getting into this level</p> <p>7 of detail, are you referring to your preparation for</p> <p>8 the deposition --</p> <p>9 A. No.</p> <p>10 Q. -- or at the time?</p> <p>11 A. I think at the time.</p> <p>12 (Exhibit 38 was marked for identification</p> <p>13 and attached hereto.)</p> <p>14 BY MR. FONTECILLA:</p> <p>15 Q. I'm handing you what's been marked as</p> <p>16 Exhibit 38. Go ahead and take a minute to review</p> <p>17 that document, please.</p> <p>18 A. Okay.</p> <p>19 Q. Do you recall -- this is a letter on July</p> <p>20 5th, 2002 from PETA to you; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And do you recall receiving this letter?</p> <p>23 A. Vaguely, yes. Yes.</p> <p>24 Q. And this is -- in the first paragraph,</p> <p>25 you'll see a reference to the release of the FMI and</p>	<p style="text-align: right;">340</p> <p>1 A. Yeah. Generally my understanding, yes.</p> <p>2 Q. And then the third bullet point has a</p> <p>3 section titled "Hen Space."</p> <p>4 Do you see that?</p> <p>5 A. Say that again, which?</p> <p>6 Q. That third bullet point --</p> <p>7 A. The third bullet. Sorry. Okay. Yes, "Hen</p> <p>8 Space."</p> <p>9 Q. And do you recall what the concern was that</p> <p>10 PETA was raising with -- with regards to hen space</p> <p>11 on July 5th, 2002?</p> <p>12 A. I don't recall.</p> <p>13 Q. Did you have any conversations with PETA</p> <p>14 around July of 2002 regarding concerns about hen</p> <p>15 space?</p> <p>16 A. You know, the conversations that I -- I had</p> <p>17 with -- with Steve Gross around, you know, were --</p> <p>18 were these, you know, it was, as I remember, good.</p> <p>19 However, we've got this long laundry list of</p> <p>20 concerns, these being the concerns, and that was --</p> <p>21 that was sort of always the case with Steve Gross,</p> <p>22 you know. Nothing was ever sort of good enough.</p> <p>23 And, you know, so I do remember</p> <p>24 interactions with PETA and with Steve on these, on</p> <p>25 these issues, but how we resolved them and how we</p>
<p style="text-align: right;">339</p> <p>1 NCCR farmed animal welfare standards last week.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. So the FMI-NCCR guidelines that were</p> <p>5 included in Exhibit 28 had just been released the</p> <p>6 week prior to your receiving this letter from PETA;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And PETA is writing to you to get</p> <p>10 clarification about Safeway's plan to adopt FMA --</p> <p>11 FMI guidelines now that the FMI guidelines had been</p> <p>12 made public; right?</p> <p>13 A. Correct.</p> <p>14 Q. And it -- in the last sentence of that first</p> <p>15 paragraph it says that PETA is concerned about some</p> <p>16 of the guidelines; right?</p> <p>17 A. Yes.</p> <p>18 Q. And that's because they're seeing it for the</p> <p>19 first time and are raising concerns with you within</p> <p>20 a week of seeing them; right?</p> <p>21 MR. MURRAY: Object to the form of the</p> <p>22 question. Calls for speculation.</p> <p>23 THE WITNESS: Yeah, I'm -- I --</p> <p>24 BY MR. FONTECILLA:</p> <p>25 Q. Was that your understanding?</p>	<p style="text-align: right;">341</p> <p>1 moved, you know -- is -- again, I would have to...</p> <p>2 Q. And in the last sentence there it says that</p> <p>3 PETA seeks "confirmation that Safeway will have all</p> <p>4 egg suppliers at this standard within 18 months."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Do you recall discussions with PETA around</p> <p>8 July of 2002 regarding whether Safeway's egg</p> <p>9 suppliers would be complying with the UEP guidelines</p> <p>10 within 18 months of the release of the FMI</p> <p>11 guidelines?</p> <p>12 A. You know, I really -- I don't.</p> <p>13 Q. Do you recall any discussions with PETA</p> <p>14 around this timeframe regarding a timeline for the</p> <p>15 implementation of the UEP guidelines by Safeway's</p> <p>16 egg suppliers?</p> <p>17 A. Not -- not specifically. I -- I'm not</p> <p>18 remembering. There were lots of conversations over</p> <p>19 time, but I -- I don't, around this time, remember</p> <p>20 that specifically.</p> <p>21 Q. Do you remember generally whether PETA was</p> <p>22 pressuring Safeway to shorten the timeline by which</p> <p>23 its egg suppliers would comply with the UEP</p> <p>24 guidelines?</p> <p>25 A. Yeah. I mean -- well, PETA always wanted</p>

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Brian Dowling

April 11, 2014

87 (Pages 342 to 345)

<p style="text-align: right;">342</p> <p>1 something faster, better, and that was their MO, you 2 know. 3 Q. And -- sorry. 4 A. I'm sorry. So I -- I wouldn't be surprised 5 if they were pushing us and they probably were, but 6 I -- I -- again, this is going back 12 years ago. 7 Q. And as a result of this letter, did you 8 discuss with anyone at Safeway PETA's concerns 9 regarding hen space? 10 A. I probably did. I can't remember exactly 11 who I would have talked to however. 12 Q. Did Safeway in response to PETA's concern as 13 expressed in this July 2002 letter, take any effort 14 to increase its efforts to encourage egg suppliers 15 to adopt the UEP guidelines? 16 A. I -- I can't recall specifically. 17 (Exhibit 39 was marked for identification 18 and attached hereto.) 19 BY MR. FONTECILLA: 20 Q. I'm handing you what's been marked as 21 Exhibit 39. 22 A. There it is. 23 Q. And do you recognize this document? 24 A. I do. 25 Q. And how do you recognize this document?</p>	<p style="text-align: right;">344</p> <p>1 require a timetable." 2 Q. And what was the basis for your statement to 3 PETA in that sentence regarding the recommendations 4 having economic implications? 5 A. It must have been a conversation I had 6 with -- with Karen Brown. I -- it's likely the 7 origin of that. 8 Q. And did that conversation with Karen Brown 9 involve any information from FMI about the economic 10 implications of egg suppliers adopting the UEP 11 guidelines? 12 A. It might have. I mean, but it was a 13 conversation that would have happened 12 years ago 14 so I -- I can't recall specifically. 15 Q. What about generally? 16 A. Yes, generally, there -- that we could -- we 17 would -- I think that's where, you know, I -- where 18 this came from. 19 Q. So the reference to economic implications in 20 this sentence of a letter drafted by you refers to a 21 conversation with FMI in which FMI informed you 22 about economic implications that egg suppliers may 23 have had in adopting the UEP guidelines; correct? 24 MR. MURRAY: Object to the form of the 25 question. It mischaracterizes his testimony.</p>
<p style="text-align: right;">343</p> <p>1 A. It's a letter from me. 2 Q. And do you recall writing this letter? 3 A. Yeah. If it's -- if I wrote it, I wrote it. 4 It's my signature, but, yes, I -- I -- but let me 5 read it. If you don't mind, if I could read it 6 again. 7 Q. Sure. Please take your time. 8 A. Okay. Yes. 9 Q. You were responding to PETA's July 5th 10 letter -- 11 A. Right. 12 Q. -- in this letter; correct? 13 A. Yes. 14 Q. And part of that response has to do with the 15 timetable by which PETA was seeking Safeway to 16 ensure its egg suppliers adopt FMI's guidelines; 17 correct? 18 A. Yes. 19 Q. And in the first paragraph, in the second 20 sentence, can you read the sentence starting with 21 "FMI"?" 22 A. FMI made it clear in their introductory 23 statement that their work is not complete -- that 24 the issue is complicated and some of the 25 recommendations have economic implications and</p>	<p style="text-align: right;">345</p> <p>1 THE WITNESS: Could you ask the question 2 again? 3 BY MR. FONTECILLA: 4 Q. Sure. The reference to economic 5 implications in this sentence of the letter you 6 drafted on July 12th, 2002, refers to the 7 conversation that you had with FMI in which FMI 8 informed you of potential economic implications by 9 egg suppliers of adopting the UEP guidelines; right? 10 A. That -- 11 MR. MURRAY: Objection to the form of the 12 question. It mischaracterizes his testimony and 13 this document. 14 THE WITNESS: Right. My -- my recollection 15 is that my reference here was -- was the result of a 16 conversation with FMI on this matter, that's -- 17 that's the best of my recollection. 18 BY MR. FONTECILLA: 19 Q. And FMI informed you that egg suppliers may 20 undertake economic implications in adopting the UEP 21 guidelines; right? 22 MR. MURRAY: Object to the form of the 23 question. It mischaracterizes what he's testified 24 to, and this document. 25 ///</p>

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Brian Dowling

April 11, 2014

88 (Pages 346 to 349)

346	348
<p>1 BY MR. FONTECILLA:</p> <p>2 Q. Does reviewing this letter that you drafted 3 in 2002 --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- refresh your recollection as to whether 6 anyone at FMI ever informed you about economic 7 implications that may be imposed on egg suppliers in 8 connection with the adoption of the UEP guidelines?</p> <p>9 A. It -- it -- it generally refreshes my memory.</p> <p>10 Q. And does it refresh your recollection that, 11 in fact, you received information from FMI at some 12 point regarding economic implications to egg 13 suppliers in adopting the UEP guidelines?</p> <p>14 MR. MURRAY: Objection. Asked and answered.</p> <p>15 THE WITNESS: I think I've answered the 16 question, haven't I? Or --</p> <p>17 BY MR. FONTECILLA:</p> <p>18 Q. No. The question is: Did you receive 19 information from FMI at any time that egg suppliers 20 may face economic implications in connection with 21 adopting the UEP guidelines?</p> <p>22 MR. MURRAY: Objection. Asked and answered.</p> <p>23 THE WITNESS: I -- I -- I would have had a 24 conversation perhaps with FMI on this.</p>	<p>1 adopting the UEP guidelines?</p> <p>2 A. Economic --</p> <p>3 MR. MURRAY: Objection. Asked and answered.</p> <p>4 THE WITNESS: Economic information, in -- in 5 what form?</p> <p>6 BY MR. FONTECILLA:</p> <p>7 Q. Any form regarding the cost --</p> <p>8 A. Well, would I --</p> <p>9 Q. -- or economic implications to egg suppliers 10 in connection with adopting the UEP guidelines.</p> <p>11 MR. MURRAY: Objection. Asked and answered.</p> <p>12 Five times.</p> <p>13 MR. FONTECILLA: He has not answered the 14 question.</p> <p>15 MR. MURRAY: Well, I believe he has and the 16 record will reflect that.</p> <p>17 THE WITNESS: What -- what -- what -- you 18 want a yes-or-no answer. I mean, I've answered --</p> <p>19 BY MR. FONTECILLA:</p> <p>20 Q. Did you receive any information from FMI 21 about the costs or economics to egg suppliers of 22 adopting the UEP guidelines?</p> <p>23 A. You know, I don't recall receiving specific information about economic implications from FMI.</p> <p>24 Q. What about general implications, whether</p>
347	349
<p>1 BY MR. FONTECILLA:</p> <p>2 Q. You don't need to answer "yes" or "no," but 3 it's a simple or yes-or-no question. Did you 4 receive from FMI at any time that egg suppliers 5 might face economic implications in connection with 6 adopting the UEP guidelines?</p> <p>7 MR. MURRAY: Objection. Asked and answered.</p> <p>8 BY MR. FONTECILLA:</p> <p>9 Q. You're under oath and you're being 10 videotaped.</p> <p>11 MR. MURRAY: That is totally uncalled for, 12 Counsel. Those kind of comments are inappropriate. 13 You can ask questions, but you're not going to make 14 comments like that to my client.</p> <p>15 THE WITNESS: Well, again, I've -- I've 16 tried to answer the question that, you know, that 17 that sentence likely relates to a conversation I had 18 with FMI that they would have provided me with some 19 indication that there were economic implications 20 involved here. That -- that is the best I can -- I 21 can do.</p> <p>22 BY MR. FONTECILLA:</p> <p>23 Q. Is your testimony today that you never 24 received any information from FMI regarding economic implications to egg suppliers in connection with</p>	<p>1 there would be economic implications, whether costs 2 would go up, whether costs would go down?</p> <p>3 MR. MURRAY: Same objection. Asked and 4 answered.</p> <p>5 THE WITNESS: Yeah. The -- the only thing 6 that I'm -- I would recall here is that I -- I may 7 have had a conversation with -- with Karen Brown 8 where there would have been economic implications 9 referenced that would have led me to sort of write 10 this. That -- that's --</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. And did some of the economic implications 13 referenced by Miss Brown have to do with economic 14 implications to egg suppliers in connection with 15 adopting the UEP guidelines?</p> <p>16 A. It -- it may have.</p> <p>17 Q. It did or it didn't?</p> <p>18 MR. MURRAY: Objection. Asked and answered.</p> <p>19 THE WITNESS: Doesn't -- I mean, doesn't the 20 letter answer it? I --</p> <p>21 BY MR. FONTECILLA:</p> <p>22 Q. It doesn't.</p> <p>23 A. It doesn't?</p> <p>24 Q. I'm asking you in your -- with the letter 25 refreshing your recollection about the conversation</p>

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Brian Dowling

April 11, 2014

89 (Pages 350 to 353)

<p style="text-align: right;">350</p> <p>1 you're testifying about that's not referenced in 2 this letter, in that conversation or any other 3 conversation with FMI, did FMI ever convey any 4 general or specific information to you -- 5 A. Not -- not that I can recall. 6 Q. If you can let me finish. 7 A. Sorry. My apologies. 8 Q. In any conversation that you had with FMI, 9 did FMI ever convey to you any general or specific 10 information about the costs or economic implications 11 to egg suppliers of complying with the UEP 12 guidelines? 13 A. Not that I can recall. I -- I -- clearly, 14 there was some -- there's a -- in this letter 15 indicates some economic implication that I was aware 16 of 12 years ago, but you're asking me to remember 17 specifically a conversation or information that I 18 received 12 years ago and I'm -- I can't put my 19 finger on anything specific that I would have 20 received from FMI beyond a phone -- beyond a 21 conversation with Karen Brown. That's as much as I 22 can tell you. 23 Q. Are you aware of anyone else at Safeway 24 receiving information from FMI or another third 25 party about the costs or economic implications to</p>	<p style="text-align: right;">352</p> <p>1 conjunction with an independent animal welfare 2 expert, we will audit our suppliers to ensure" -- 3 ensure that our -- typo -- "to ensure that are 4 following the guidelines." 5 Q. And that -- that should have been "that they 6 are following the guidelines"? 7 A. Yeah. Right. Ensure they are following the 8 guidelines, yeah. 9 Q. And what was your -- what was the basis for 10 your statement that Safeway would audit its 11 suppliers to ensure that they are following the FMI 12 guidelines? 13 A. That our QA team would be auditing our 14 suppliers. 15 Q. And after writing this letter, are you aware 16 of any efforts by Safeway to audit its egg suppliers 17 to ensure that they were following the FMI 18 guidelines? 19 A. Again, 12 years ago, a long time ago, my 20 knowledge of this -- my -- is limited, but our -- 21 my -- again, the only thing that I would know would 22 be that our QA team would have been -- would have 23 been responsible for that. 24 (Exhibit 40 was marked for identification 25 and attached hereto.)</p>
<p style="text-align: right;">351</p> <p>1 egg suppliers in connection with complying with the 2 UEP guidelines? 3 A. No. 4 Q. In the second paragraph of this exhibit, can 5 you read the sentence that starts with "As," the 6 second sentence. 7 A. "As we have said, we will implement the FMI 8 guidelines as they are developed and communicate 9 them to our suppliers." 10 Q. And do you -- did you communicate to your 11 egg suppliers any information regarding 12 implementation of the FMI guidelines? 13 A. I did not. Some of our team may have and 14 I -- I assume they did, but I did not specifically. 15 Q. And do you know -- do you know whether after 16 you wrote this letter anyone at Safeway communicated 17 to suppliers information about implementing the FMI 18 guidelines? 19 A. I suspect that would have happened through 20 our QA team. That's as much as I know. 21 Q. And can you read the next sentence, please. 22 A. Starting with "Using"? 23 Q. Yes, please. 24 A. "Using an instrument that FMI is working to 25 finalize over the next several months and in</p>	<p style="text-align: right;">353</p> <p>1 BY MR. FONTICILLA: 2 Q. I'm handing you what's been marked as 3 Exhibit 40. Go ahead and take a minute and review 4 that document, please. 5 A. Yep. 6 Q. Do you recognize this document? 7 A. I do. 8 Q. How do you recognize it? 9 A. A letter from me to Steve Gross. 10 Q. On August 15th, 2002; right? 11 A. Uh-huh. Yes. 12 Q. Do you -- do you recall writing this letter? 13 A. Generally, yes, I do. Yes. 14 Q. It references a phone conversation between 15 you and Mr. Gross at some point between July 12th, 16 2002 and August 15th, 2002; correct? 17 A. Correct. 18 Q. And what was the substance of that 19 conversation? 20 A. With Steve Gross? 21 Q. Yes. 22 A. Again, 12 years ago. My -- you know, I -- I 23 recall that Steve was always recommending that we 24 talk to various people and to get other opinions 25 beyond PETA's and Bernie Roland was one of them and</p>

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Brian Dowling

April 11, 2014

90 (Pages 354 to 357)

<p style="text-align: right;">354</p> <p>1 I recall talking with Bernie Roland and I think 2 he -- you know, sent me -- I -- either I found his 3 book or I read part of his book. 4 And then Ian Duncan, I remember, you know, 5 finally connecting eventually with Ian Duncan, who 6 Steve was trying to sort of push on to us as being 7 an expert in sort of the -- on the egg side. 8 Q. So let's take those one by one. You said 9 you also had a conversation in or around the summer 10 of 2002 with a Professor Roland.</p> <p>11 A. Right.</p> <p>12 Q. Who is Professor Roland?</p> <p>13 A. He's an animal science professor, and I 14 can't recall where. It's been that long ago. It 15 might have been, it wasn't the University of 16 Colorado, that was Temple Grandin. Ian Duncan -- 17 well, Roland, I can't remember exactly where. 18 Q. Let's take them one at a time. 19 A. Yeah. Sure. 20 Q. So your memory stays focused. 21 A. Okay. 22 Q. In your conversation with Professor Roland, 23 in or around the summer of 2002, did you discuss 24 with him animal welfare standards as they related to 25 egg suppliers, including the UEP guidelines?</p>	<p style="text-align: right;">356</p> <p>1 with -- with Professor Roland and with Professor 2 Duncan as to whether or not these were people who 3 could be helpful to us, you know, and -- yeah, 4 there -- there was discussion of eggs. 5 Q. Did you discuss the UEP guidelines with 6 Professor Duncan? 7 A. I -- I don't recall talking specifically 8 with either one of them about the UEP guidelines. 9 I -- I could have, but I don't recall specifically. 10 Q. And then can you read the last sentence of 11 that first paragraph, please? 12 A. Yeah. "We and the food industry overall 13 will do everything we can to" -- 14 Q. From -- oh, from the -- 15 A. Excuse me, I'm sorry. "Regarding PETA's 16 timeline on cage space and forced molting, we and 17 the food industry overall will do everything we can 18 to push the supplier community on this." 19 Q. What did you mean by that sentence? 20 A. That -- that we were going to -- we were 21 going to, you know, move forward with -- with this 22 and we were going to do what we could to... 23 Q. So this is in reference to the expedited 24 timeline that PETA was asking Safeway to implement 25 on its egg suppliers --</p>
<p style="text-align: right;">355</p> <p>1 A. I might have, but I can't recall 2 specifically. It's been that long. 3 Q. And did you have a discussion in or around 4 the summer of 2002 with Ian Duncan? 5 A. I did. 6 Q. And who is Ian Duncan? 7 A. He's a -- he's an animal science professor 8 in Canada like, the University of Guelph or 9 something. 10 DEPOSITION REPORTER: University of? 11 THE WITNESS: Guelph, it's like G-u-e-l-p-h, 12 it's in or around Toronto. 13 BY MR. FONTECILLA: 14 Q. And in your conversation or conversations 15 with Ian Duncan in or around August of 2002, did you 16 discuss with Mr. Duncan animal welfare standards 17 that applied to egg suppliers including the UEP 18 guidelines? 19 A. I -- I believe so, yes, I did, but I can't 20 remember the content of those conversations. It's 21 been that long. 22 Q. And do you remember generally what was 23 discussed? 24 A. Eggs, you know, and I think, but I -- I was 25 trying to get a feel, you know, in both cases</p>	<p style="text-align: right;">357</p> <p>1 A. Uh-huh. 2 Q. -- in adopting the UEP guidelines; right? 3 A. I think -- I believe so. 4 Q. And as part of that and in response to that 5 in this letter, you are informing PETA that you'll 6 do everything you can to influence Safeway's egg 7 suppliers to adopt the UEP guidelines; right? 8 MR. MURRAY: Object to the form of the 9 question. It mischaracterizes the document. 10 THE WITNESS: Yeah. I -- it -- it says what 11 it says, I think. I'm just, I'm not sure what else 12 to say about it. I mean... 13 BY MR. FONTECILLA: 14 Q. Would that be a fair characterization that 15 you're informing PETA that you understand that their 16 timeline as to adopting cage space requirements will 17 be implemented by you as -- as much as you can push 18 your egg suppliers to do it? 19 A. Yeah. Everything we can. That's -- that's, 20 you know, and -- that's -- that doesn't specifically 21 define exactly what would happen, but, yeah, it's -- 22 the answer is yes. 23 Q. And the conversation that's referenced here 24 with you and Mr. Gross, in that conversation does 25 this document reflect whether you discuss with</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

91 (Pages 358 to 361)

358	360
<p>1 Mr. Gross the cage space requirements of the UEP 2 guidelines or the implementation timeline that PETA 3 was asking Safeway to implement?</p> <p>4 MR. MURRAY: Object to the form of the 5 question. It's ambiguous.</p> <p>6 THE WITNESS: Yeah. I -- I -- again, 12 7 years ago, a long time ago. I can't remember 8 exactly what Steve and I would have talked about. 9 We could have talked about UEP guidelines or he 10 would have talked to me about it, knowing Steve 11 Gross, you know. I'm -- I more often listened than 12 I did talk when Gross was on the line.</p> <p>13 BY MR. FONTECILLA:</p> <p>14 Q. Do you recall discussing with Dr. Grandin 15 around this time period the UEP guidelines and 16 specifically with respect to the cage space 17 allocation aspect?</p> <p>18 A. That's the one I -- I have less recall of, I mean, that we had -- that I talked -- I -- you know, if I said I had been in touch with Temple, I -- I, you know, we must have. I -- it was probably me, but I think it was on a different subject. I don't think it was -- I don't think it was -- I think it was more on the -- as I say here, on the meat side of things rather than the egg side of things.</p>	<p>1 Q. This is a -- 2 A. -- receiving this. 3 Q. This is a letter from Miss Brown at FMI 4 dated August 16th, 2002 that was sent to various 5 representatives of retailers, including yourself; 6 correct?</p> <p>7 A. Yes. 8 Q. And do you recall the context around 9 receiving this letter in or about August of 2002?</p> <p>10 A. I -- well, I'm just reading through it here and seeing that there's been some correspondence with PETA and FMI. I'm trying to sort of straighten out what -- what PETA is asking. You know, I -- I see that PETA is expressing their concerns where -- where things stand, I guess.</p> <p>16 Q. And -- and how does this -- these concerns 17 expressed by PETA around this time relate to your 18 conversations in or around this August of 2002 time 19 period with Mr. Gross?</p> <p>20 A. I can't remember. I mean, I -- he -- he 21 may have said, hey, by the way or -- you know -- 22 well, let me rephrase that. He -- he may have said, 23 referenced this communication. This is the... 24 Yeah, boy, that's, you know, I -- I can't 25 recall. It's been -- it's been that long. But I --</p>
359	361
<p>1 Q. Do you recall having any egg-related 2 discussions with Dr. Grandin in or around the time 3 period of the summer of 2002?</p> <p>4 A. I don't specifically recall. I might have, but I don't recall specifically. (Exhibit 41 was marked for identification and attached hereto.)</p> <p>8 BY MR. FONTECILLA:</p> <p>9 Q. I'll hand you what's been marked as 10 Exhibit 41.</p> <p>11 MR. FONTECILLA: Let's go off the record for 12 a second.</p> <p>13 THE VIDEOGRAPHER: Going off the record. 14 The time is 5:31 p.m. (Off the record.)</p> <p>16 THE VIDEOGRAPHER: We're back on the record. 17 The time is 5:33 p.m.</p> <p>18 BY MR. FONTECILLA:</p> <p>19 Q. Mr. Dowling, you have in front of you what's 20 been marked as Exhibit 41. Do you recognize this 21 document?</p> <p>22 A. I do.</p> <p>23 Q. And how do you recognize this document?</p> <p>24 A. On -- it was sent to me from Karen Brown. My name is on the cover --</p>	<p>1 you know, knowing Gross the way I do and this, how many pages does this go on, this is Friedrich's letter. Okay.</p> <p>4 Q. And why don't we start on the first page, 5 the letter that you received from Miss Brown.</p> <p>6 A. Sure.</p> <p>7 Q. There's a section titled "United Egg Producers."</p> <p>9 A. Uh-huh.</p> <p>10 Q. Do you see that?</p> <p>11 A. Yep.</p> <p>12 Q. And in it she says, "UEP has requested we communicate to our members how important it is for retailers voluntarily supporting the FMI animal welfare guidelines for egg layers to make sure their egg buyers let their egg suppliers know they want confirmation their suppliers are following UEP guidelines."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Do you remember being informed by FMI around 22 this time that the UEP wanted FMI members to convey 23 to its egg suppliers that it wanted confirmation 24 that they were following UEP guidelines?</p> <p>25 A. I generally remember that, yes.</p>

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Brian Dowling

April 11, 2014

92 (Pages 362 to 365)

362	364
<p>1 Q. Earlier --</p> <p>2 A. Can I read it again?</p> <p>3 Q. Sure. And earlier when we were looking at</p> <p>4 exhibits 34 through 36, which were the letters from</p> <p>5 UEP to FMI, there were statements in those letters</p> <p>6 about UEP encouraging FMI to encourage its members</p> <p>7 to pressure its egg suppliers to adopt the UEP</p> <p>8 guidelines, and they said it was important; right?</p> <p>9 A. Right.</p> <p>10 MR. MURRAY: Objection to the</p> <p>11 characterization.</p> <p>12 BY MR. FONTICILLA:</p> <p>13 Q. And I asked whether you were aware, at any</p> <p>14 time, of receiving any communication from FMI about</p> <p>15 UEP's communication to FMI to ask FMI members to</p> <p>16 encourage its egg suppliers to adopt the UEP</p> <p>17 guidelines.</p> <p>18 Do you remember that?</p> <p>19 A. I do.</p> <p>20 MR. MURRAY: Object to the form of the</p> <p>21 question.</p> <p>22 BY MR. FONTICILLA:</p> <p>23 Q. And you said that you did not remember;</p> <p>24 right?</p> <p>25 A. I -- I recall not recalling, yes.</p>	<p>1 communication, did Safeway undertake any efforts to</p> <p>2 encourage its egg suppliers to follow the UEP</p> <p>3 guidelines as suggested by Miss Brown in this</p> <p>4 document?</p> <p>5 A. Again, that would have been the QA side</p> <p>6 carrying out that rather than myself.</p> <p>7 Q. So you're not aware of any efforts by</p> <p>8 Safeway as a result of receiving this communication</p> <p>9 from FMI to encourage its egg suppliers to follow</p> <p>10 the UEP guidelines?</p> <p>11 A. I'm not recalling, no.</p> <p>12 Q. On the second page of this document, there's</p> <p>13 a list of the FMI officers and directors.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Listed at the top under "Vice Chair,</p> <p>17 Finance" is Safeway CEO at the time Mr. Steven Burd;</p> <p>18 correct?</p> <p>19 A. Uh-huh. Yes.</p> <p>20 Q. Does looking at this document refresh your</p> <p>21 recollection as to what time period Mr. Burd was on</p> <p>22 the board of directors for FMI?</p> <p>23 A. It -- it helps, yes.</p> <p>24 Q. And what time period was Mr. Burd on the</p> <p>25 board of directors of FMI?</p>
363	365
<p>1 Q. And looking at this -- and looking at this</p> <p>2 document now, does it refresh your recollection as</p> <p>3 to whether you received communications from FMI</p> <p>4 informing you that UEP wanted FMI members to</p> <p>5 encourage its egg suppliers to follow the UEP</p> <p>6 guidelines?</p> <p>7 MR. MURRAY: Object to the form of the</p> <p>8 question. It mischaracterizes the document.</p> <p>9 MR. FONTICILLA: I'm not talking about the</p> <p>10 document.</p> <p>11 BY MR. FONTICILLA:</p> <p>12 Q. I'm asking whether this document refreshes</p> <p>13 your recollection about whether FMI ever informed</p> <p>14 you that UEP would like FMI members to encourage</p> <p>15 their egg suppliers to adopt the UEP guidelines.</p> <p>16 A. It does refresh my memory.</p> <p>17 Q. And how does it refresh your recollection so</p> <p>18 that we can clarify the record?</p> <p>19 A. I just -- that -- that -- I mean, by in</p> <p>20 seeing this, I'm -- I'm recalling that -- that I was</p> <p>21 on the receiving end of the communication from Karen</p> <p>22 on the subject. That -- that is -- that's the only</p> <p>23 thing I'm suggesting here, and so that helps me</p> <p>24 generally recall the issue.</p> <p>25 Q. And as a result of receiving this</p>	<p>1 A. You know, again, I'd have to look and check,</p> <p>2 but I recall that, you know, in the sort of the mid</p> <p>3 2000s, well into the, you know, he -- he served --</p> <p>4 he served as finance chair and then he eventually</p> <p>5 became chair of the board. I think -- I think he</p> <p>6 may have succeeded Ron Pearson as chair, I think.</p> <p>7 Q. And in the next page of this document is a</p> <p>8 letter from Karen Brown to FMI members dated August</p> <p>9 16th, 2002.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And it's the same date as the letter that</p> <p>13 she's sending it to this smaller group of retailer</p> <p>14 representatives on the first page.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Why is FMI communicating with a subset of</p> <p>18 its members representatives on the first page, but</p> <p>19 sending a different letter to all of its members on</p> <p>20 the same day?</p> <p>21 MR. MURRAY: Objection. Calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: I don't know. I wouldn't --</p> <p>24 I'm not sure why they did that.</p> <p>25 ///</p>
362	364
<p>1 Q. Earlier --</p> <p>2 A. Can I read it again?</p> <p>3 Q. Sure. And earlier when we were looking at</p> <p>4 exhibits 34 through 36, which were the letters from</p> <p>5 UEP to FMI, there were statements in those letters</p> <p>6 about UEP encouraging FMI to encourage its members</p> <p>7 to pressure its egg suppliers to adopt the UEP</p> <p>8 guidelines, and they said it was important; right?</p> <p>9 A. Right.</p> <p>10 MR. MURRAY: Objection to the</p> <p>11 characterization.</p> <p>12 BY MR. FONTICILLA:</p> <p>13 Q. And I asked whether you were aware, at any</p> <p>14 time, of receiving any communication from FMI about</p> <p>15 UEP's communication to FMI to ask FMI members to</p> <p>16 encourage its egg suppliers to adopt the UEP</p> <p>17 guidelines.</p> <p>18 Do you remember that?</p> <p>19 A. I do.</p> <p>20 MR. MURRAY: Object to the form of the</p> <p>21 question.</p> <p>22 BY MR. FONTICILLA:</p> <p>23 Q. And you said that you did not remember;</p> <p>24 right?</p> <p>25 A. I -- I recall not recalling, yes.</p>	<p>1 communication, did Safeway undertake any efforts to</p> <p>2 encourage its egg suppliers to follow the UEP</p> <p>3 guidelines as suggested by Miss Brown in this</p> <p>4 document?</p> <p>5 A. Again, that would have been the QA side</p> <p>6 carrying out that rather than myself.</p> <p>7 Q. So you're not aware of any efforts by</p> <p>8 Safeway as a result of receiving this communication</p> <p>9 from FMI to encourage its egg suppliers to follow</p> <p>10 the UEP guidelines?</p> <p>11 A. I'm not recalling, no.</p> <p>12 Q. On the second page of this document, there's</p> <p>13 a list of the FMI officers and directors.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Listed at the top under "Vice Chair,</p> <p>17 Finance" is Safeway CEO at the time Mr. Steven Burd;</p> <p>18 correct?</p> <p>19 A. Uh-huh. Yes.</p> <p>20 Q. Does looking at this document refresh your</p> <p>21 recollection as to what time period Mr. Burd was on</p> <p>22 the board of directors for FMI?</p> <p>23 A. It -- it helps, yes.</p> <p>24 Q. And what time period was Mr. Burd on the</p> <p>25 board of directors of FMI?</p>
363	365
<p>1 Q. And looking at this -- and looking at this</p> <p>2 document now, does it refresh your recollection as</p> <p>3 to whether you received communications from FMI</p> <p>4 informing you that UEP wanted FMI members to</p> <p>5 encourage its egg suppliers to follow the UEP</p> <p>6 guidelines?</p> <p>7 MR. MURRAY: Object to the form of the</p> <p>8 question. It mischaracterizes the document.</p> <p>9 MR. FONTICILLA: I'm not talking about the</p> <p>10 document.</p> <p>11 BY MR. FONTICILLA:</p> <p>12 Q. I'm asking whether this document refreshes</p> <p>13 your recollection about whether FMI ever informed</p> <p>14 you that UEP would like FMI members to encourage</p> <p>15 their egg suppliers to adopt the UEP guidelines.</p> <p>16 A. It does refresh my memory.</p> <p>17 Q. And how does it refresh your recollection so</p> <p>18 that we can clarify the record?</p> <p>19 A. I just -- that -- that -- I mean, by in</p> <p>20 seeing this, I'm -- I'm recalling that -- that I was</p> <p>21 on the receiving end of the communication from Karen</p> <p>22 on the subject. That -- that is -- that's the only</p> <p>23 thing I'm suggesting here, and so that helps me</p> <p>24 generally recall the issue.</p> <p>25 Q. And as a result of receiving this</p>	<p>1 A. You know, again, I'd have to look and check,</p> <p>2 but I recall that, you know, in the sort of the mid</p> <p>3 2000s, well into the, you know, he -- he served --</p> <p>4 he served as finance chair and then he eventually</p> <p>5 became chair of the board. I think -- I think he</p> <p>6 may have succeeded Ron Pearson as chair, I think.</p> <p>7 Q. And in the next page of this document is a</p> <p>8 letter from Karen Brown to FMI members dated August</p> <p>9 16th, 2002.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And it's the same date as the letter that</p> <p>13 she's sending it to this smaller group of retailer</p> <p>14 representatives on the first page.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Why is FMI communicating with a subset of</p> <p>18 its members representatives on the first page, but</p> <p>19 sending a different letter to all of its members on</p> <p>20 the same day?</p> <p>21 MR. MURRAY: Objection. Calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: I don't know. I wouldn't --</p> <p>24 I'm not sure why they did that.</p> <p>25 ///</p>

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Brian Dowling

April 11, 2014

93 (Pages 366 to 369)

<p style="text-align: right;">366</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Do you have an understanding of what this 3 group of individuals on the first page represents?</p> <p>4 A. You know, these -- these are all public 5 relations or communications executives with these 6 companies.</p> <p>7 Q. Would it be fair to say that those are the 8 individuals who would be in charge of their 9 respective company's efforts to encourage egg 10 suppliers to follow UEP guidelines?</p> <p>11 MR. MURRAY: Objection to the form of the 12 question.</p> <p>13 THE WITNESS: I -- I couldn't tell you, but 14 I -- I -- because I'm -- I couldn't tell you whether 15 Donna Matthews was -- how she was engaged at Giant 16 Food, for instance, or Barry Scher, for that matter. 17 I -- the only thing that I know is they are PR 18 people like myself.</p> <p>19 BY MR. FONTECILLA:</p> <p>20 Q. Do you see the letter to all the FMI members 21 dated August 16th, 2002?</p> <p>22 A. Yes.</p> <p>23 Q. Was that letter sent to all FMI members on 24 August 16th, 2002?</p> <p>25 Well, I mean, does Safeway recall receiving</p>	<p style="text-align: right;">368</p> <p>1 out Exhibit 28 which looks like this.</p> <p>2 A. Got it. Yep. Right.</p> <p>3 Q. And Exhibit 37 which is the 2002 UEP 4 guidelines.</p> <p>5 A. Yeah. Okay.</p> <p>6 Q. Now, the sentence says, The FMI guidelines, 7 in Exhibit 28 -- the sentence states that, "The FMI 8 guidelines are meant to be used in conjunction with 9 the animal welfare guidelines of the producer and 10 processor organizations identified within the 11 report."</p> <p>12 Correct?</p> <p>13 A. Correct.</p> <p>14 Q. And it's the reference to the FMI guidelines 15 and report that are meant to be used are referencing 16 Exhibit 28; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And it's saying that these guidelines in 19 this June 2002 report in Exhibit 28, are meant to be 20 used in conjunction with the UEP guidelines that are 21 in Exhibit 37; correct?</p> <p>22 A. Correct.</p> <p>23 MR. MURRAY: Object to the form of the 24 question. Mischaracterizes the document.</p> <p>25 / / /</p>
<p style="text-align: right;">367</p> <p>1 that letter from FMI?</p> <p>2 A. I -- now that I see it, I do recall, yes.</p> <p>3 Q. And in the penultimate paragraph of the 4 letter, it says, "There are several important things 5 to note about this FMI/NCCR guideline document."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you understand that mean it's referencing 9 the FMI-NCCR guideline document that we saw in 10 Exhibit 28?</p> <p>11 A. Yes.</p> <p>12 Q. And the next sentence says, "First, it is 13 not a stand-alone document. It is meant to be used 14 in conjunction with the animal welfare guidelines of 15 the producer and processor organizations identified 16 within the report."</p> <p>17 Do you see that?</p> <p>18 A. I do see that.</p> <p>19 Q. And do you understand that to mean that FMI 20 is informing all its members that the FMI guidelines 21 in Exhibit 28 are meant to be used in conjunction 22 with the UEP guidelines that are in Exhibit 37?</p> <p>23 A. I know that was a long question, Adrian.</p> <p>24 Could you --</p> <p>25 Q. Sure. Absolutely. So why don't you pull</p>	<p style="text-align: right;">369</p> <p>1 BY MR. FONTECILLA:</p> <p>2 Q. Was that your understanding of what this 3 sentence meant at the time that you received this 4 letter on August 16th, 2002?</p> <p>5 A. Yes. That was my understanding.</p> <p>6 Q. Is that Safeway's understanding of what FMI 7 was trying to convey to Safeway through this letter 8 to all its members on August 16, 2002?</p> <p>9 MR. MURRAY: Objection. Beyond his 10 designation.</p> <p>11 He can answer.</p> <p>12 THE WITNESS: Yeah. I mean, I -- again, 13 I -- I can only -- it's only me, Safeway, you're 14 asking about Safeway.</p> <p>15 BY MR. FONTECILLA:</p> <p>16 Q. Sure. This is a communication between 17 Safeway and FMI; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you've been designated as the corporate 20 designee regarding animal welfare related and 21 potentially broader subjects --</p> <p>22 A. Right.</p> <p>23 Q. -- of communications between Safeway and 24 FMI; correct?</p> <p>25 MR. MURRAY: No.</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

94 (Pages 370 to 373)

<p style="text-align: right;">370</p> <p>1 THE WITNESS: No. I mean, FMI in this 2 instance, animal welfare I -- I, you know... 3 BY MR. FONTICILLA: 4 Q. Have you been not -- have you not been 5 testifying today on behalf of the company with 6 regards to communications between Safeway and FMI? 7 A. Oh, yes. No. Yes, for sure. 8 Q. And this is one of those; right? 9 A. This is one of them, yes. That's right. 10 Q. And so was it Safeway's understanding that 11 FMI was informing all its members that the 2002 FMI 12 guidelines were meant to be used in conjunction with 13 the UEP guidelines? 14 MR. MURRAY: Objection. Calls for 15 speculation. 16 THE WITNESS: I -- again, I would be 17 speculating, but I think the answer is yes. 18 (Exhibit 42 was marked for identification 19 and attached hereto.) 20 BY MR. FONTICILLA: 21 Q. I'm handing you what's been marked as 22 Exhibit 42. This is a -- an FMI document titled 23 "Animal Welfare Standards." 24 Do you see that? 25 A. I do.</p>	<p style="text-align: right;">372</p> <p>1 "The United Egg Producers recommends a gradual 2 increase in hen 'stocking density' to a minimum of 3 67 square inches by 2012." 4 Do you see that? 5 A. I do. 6 Q. And then the one above that says, 7 "McDonald's requires that its suppliers house hens 8 in spaces of at least 72 square inches." 9 Do you see that? 10 A. I do. 11 DEPOSITION REPORTER: "McDonald's requires"? 12 MR. FONTICILLA: "...that its suppliers 13 house hens in spaces of at least 72 square inches." 14 BY MR. FONTICILLA: 15 Q. Do you see that? 16 A. Yes. 17 Q. Okay. So was it Safeway's understanding in 18 or around 2002, before adopting the FMI guidelines, 19 that McDonald's had a cage space requirement of a 20 larger amount of square inches than the UEP 21 guidelines? 22 A. I -- no. I -- I'm not a -- no. 23 Q. And was it Safeway's understanding that PETA 24 was demanding of Safeway compliance with the 72 25 square inch requirement?</p>
<p style="text-align: right;">371</p> <p>1 Q. Have you seen this document before? 2 A. No, not that I can recall. 3 Q. And if you go to the third page -- well, 4 actually, if you go to the -- on the first page, it 5 has a section titled "Analysis of the PETA 6 Proposal." 7 A. Okay. 8 Q. Do you see that? 9 A. I do see that. 10 Q. And it analyzes a few things. And if you 11 flip to the second page, please, there is a section 12 titled "Hen cage size." 13 Do you see that? 14 A. I do see that. 15 Q. And it says, "PETA demands that companies 16 stop buying eggs from suppliers that gives hens less 17 than 72 square inches of space per bird." 18 Do you see that? 19 A. I see that. 20 Q. Is it your -- is it your understanding that 21 that was the demand that was being made of Safeway 22 by PETA? 23 A. I'd have to look back through the documents, 24 but I believe so. I'd -- I'd have to look. 25 Q. And the last point on that section says,</p>	<p style="text-align: right;">373</p> <p>1 A. I believe that's the case, yes. 2 Q. But Safeway was aware that the UEP 3 guidelines only required 67 square inches for 4 certain hens; right? 5 A. I believe so, yes. 6 Q. And had the UEP guidelines not been in 7 existence, would Safeway have adopted the larger 8 cage space requirement? 9 MR. MURRAY: Objection. Calls for 10 speculation. 11 THE WITNESS: Yeah, I would -- I would -- 12 again, I would be speculating. I don't... 13 MR. FONTICILLA: Okay. Let's take a break. 14 I think we're done. I just need to confer with my 15 colleague to see if I have any more questions. 16 THE WITNESS: Can I -- can I ask, what is 17 this, or where does -- I mean, I recognize Paul 18 Burnish's... 19 MR. FONTICILLA: We need to go off the 20 record. 21 THE VIDEOGRAPHER: We're off the record. 22 The time is 5:48 p.m. 23 (Off the record.) 24 THE VIDEOGRAPHER: We're back on the record. 25 The time is 6:02 p.m.</p>

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HIGHLY CONFIDENTIAL

Brian Dowling

April 11, 2014

95 (Pages 374 to 377)

<p style="text-align: right;">374</p> <p>1 (Exhibit 43 was marked for identification 2 and attached hereto.)</p> <p>3 BY MR. FONTECILLA:</p> <p>4 Q. Mr. Dowling, I've -- I've handed you what's 5 been marked as Exhibit 43. Do you recognize this 6 document?</p> <p>7 A. I do not.</p> <p>8 Q. And this is a -- in fact, we don't need -- 9 we're going to go through -- we're going to go 10 through it together a little bit together. But at 11 the top, it says that this is a -- a report or a 12 study published by Allan Rahn at Michigan State 13 University titled "An Economic Perspective on the 14 United Egg Producers' Animal Husbandry Guidelines 15 for U.S. Egg Laying Flocks."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And if you could, just read through the 19 Introduction, please. And let's focus on page 3, 20 there is a -- the first full paragraph "In a recent 21 article."</p> <p>22 A. Uh-huh. Yes.</p> <p>23 Q. The last sentence -- or the second to last 24 sentence starts with, "Today" on the fourth line up 25 from that paragraph.</p>	<p style="text-align: right;">376</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And if you go back to the first page of the 4 asterisk footnote, it says that this document was 5 revised in November of 2002.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. At that time, after November of 2002, since 9 then, are you aware of anyone at Safeway making an 10 assessment of the economic impacts that the 11 autonomous adoption by an egg supplier of the UEP 12 guidelines is likely to have?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Okay. And if you go to the last page under 15 "Conclusion," it says, "The proceeding analysis has 16 attempted to quantify 'how much more' it will cost 17 to produce white shell eggs as per bird space 18 allowances are autonomously increased by a single 19 producer."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Is Safeway aware -- or did Safeway -- strike 23 that.</p> <p>24 Did Safeway conduct any analysis, to the 25 best of your knowledge, regarding whether it would</p>
<p style="text-align: right;">375</p> <p>1 A. Uh-huh. Yes.</p> <p>2 Q. It says, "Today, I want" -- "I want to focus 3 specifically on the economic impact that the 4 adoption of the UEP Guidelines is likely to have on 5 white shell egg production cost."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you -- do you understand that to mean 9 that this is a study about the egg production cost 10 and the effect that adoption of the UEP guidelines 11 might have on those costs?</p> <p>12 MR. MURRAY: Objection to the form of the 13 document -- or the form of question. Lack of 14 foundation. Beyond the scope of this witness' 15 designation.</p> <p>16 THE WITNESS: I mean, just from my reading 17 of the introduction, I can -- I can see it, but 18 that's about as much as I -- I can understand.</p> <p>19 BY MR. FONTECILLA:</p> <p>20 Q. And this -- sorry.</p> <p>21 The last sentence says, "First we'll review 22 the UEP Guideline recommendations and then make an 23 assessment of some economic impacts that their 24 autonomous adoption is likely to have on a white 25 shell egg producer.</p>	<p style="text-align: right;">377</p> <p>1 cost more to produce white shell eggs if egg 2 suppliers adopted a larger per bird space allowance?</p> <p>3 A. Not to my knowledge.</p> <p>4 MR. FONTECILLA: Okay.</p> <p>5 MR. MURRAY: What Exhibit number was that?</p> <p>6 MS. ADENDORFF: 43.</p> <p>7 MR. FONTECILLA: I'm going to hand you 8 what's been marked as Exhibit 44. 9 (Exhibit 44 was marked for identification 10 and attached hereto.)</p> <p>11 BY MR. FONTECILLA:</p> <p>12 Q. Do you recognize this document, Mr. Dowling?</p> <p>13 A. I do. It's an email from me.</p> <p>14 Q. And this is an email dated September 23rd, 15 2008; right?</p> <p>16 A. Yes.</p> <p>17 Q. And at the bottom, is a -- an article about 18 an investigation regarding possible price fixing by 19 egg producers.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And do you recall forwarding that article to 23 Bob Gordon?</p> <p>24 A. Now that I see it, I -- I generally recall, 25 yes. It's been a long time, but I...</p>

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96 (Pages 378 to 381)

<p style="text-align: right;">378</p> <p>1 Q. And why did you forward this article to Bob 2 Gordon?</p> <p>3 A. I don't know. Let me -- I have to 4 read through it -- can I read through the article 5 again?</p> <p>6 Q. Sure. Uh-huh.</p> <p>7 A. Well, again, I can -- I -- Bob's our general 8 counsel, and --</p> <p>9 Q. And I don't want to ask about any legal 10 questions you asked your attorneys, that's 11 privileged. I don't want to put that in there.</p> <p>12 A. Uh-huh.</p> <p>13 Q. But you forwarded him an article regarding 14 an investigation by federal prosecutors about 15 possible price fixing related to eggs and tomatoes; 16 right?</p> <p>17 A. I did, yes.</p> <p>18 Q. And why did you forward that article to him?</p> <p>19 A. Because he's our chief lawyer and -- and I 20 get something from the humane society, you know, as 21 it relates to collusion and federal probe, my -- as 22 I indicate here, I wanted him to be aware of it.</p> <p>23 Q. And why did you want him to be aware of it?</p> <p>24 A. Because he's our chief lawyer and anything 25 that -- that relates to this sort of subject matter,</p>	<p style="text-align: right;">380</p> <p>1 That's all I can recall.</p> <p>2 Q. And earlier, you testified that you had read 3 the complaint in this litigation; is that right?</p> <p>4 A. I -- yes.</p> <p>5 Q. And without revealing anything that you had 6 discussed with your attorney and asking only in your 7 personal knowledge, what knowledge do you yourself 8 have of the contention that egg producers conspired 9 to reduce the supply of eggs in the U.S.?</p> <p>10 A. Just from what I read in the complaint.</p> <p>11 Q. And what knowledge do you yourself have of 12 the contention that this alleged conspiracy in this 13 litigation resulted in higher prices for egg 14 products?</p> <p>15 A. Again, also from what I read in the 16 complaint.</p> <p>17 Q. And what knowledge do you yourself have of 18 the allegation that the UEP Certified program was 19 designed or implemented to limit the supply of eggs?</p> <p>20 A. Ask -- ask me that again, please. I'm 21 sorry.</p> <p>22 Q. Sure. What knowledge do you have of the 23 allegation in this litigation that the UEP Certified 24 program was designed or implemented to limit the 25 supply of eggs?</p>
<p style="text-align: right;">379</p> <p>1 I would want him to be aware of it. I'm just -- 2 but...</p> <p>3 Q. And in the email where you forward it to 4 him, you say that this was gleefully passed along 5 from your contact at the humane society.</p> <p>6 Do you remember that communication?</p> <p>7 A. Not immediately. I'm not remembering. I -- 8 it could have been from someone like Matt Prescott.</p> <p>9 Q. And who is Matt Prescott?</p> <p>10 A. He's a representative from HSUS.</p> <p>11 Q. Do you have any recollection of what you 12 meant when you meant that this was gleefully passed 13 along to you by your contact at the humane society?</p> <p>14 A. Just vaguely that -- that, you know, as 15 sometimes they, you know, okay, check this out, you 16 know. I -- that's all I can recall I mean, you 17 know. It's thinking about Matt Prescott who would 18 likely have been the person who sent it to me. 19 Again, I'd like to read -- you know, I want to read 20 this, the full story to get a clearer idea as to 21 sort of why I would have sent this to Bob. But that 22 would be -- I think that would be why. 23 I -- but I -- getting back to your question 24 about gleefully and HSUS, he probably would have 25 said something that, hey, you know, check this out.</p>	<p style="text-align: right;">381</p> <p>1 A. I have very little, if any, knowledge of 2 that.</p> <p>3 Q. And what knowledge do you yourself have of 4 when Safeway first believed that the UEP guidelines 5 were designed to reduce flock size?</p> <p>6 MR. MURRAY: Objection to the form of the 7 question. It's beyond his designation.</p> <p>8 THE WITNESS: Yeah, I -- I don't --</p> <p>9 BY MR. FONTECILLA:</p> <p>10 Q. I'm asking in your personal capacity if you 11 have any knowledge --</p> <p>12 A. I don't have any knowledge.</p> <p>13 Q. Do you have any knowledge of whether the 14 supply of eggs or egg products decreased or 15 increased at any time since 1999 as a result of any 16 action by egg suppliers?</p> <p>17 A. I do not have any knowledge that.</p> <p>18 Q. Okay.</p> <p>19 MR. FONTECILLA: I need to mark one last 20 exhibit as 45 for the record.</p> <p>21 (Exhibit 45 was marked for identification 22 and attached hereto.)</p> <p>23 BY MR. FONTECILLA:</p> <p>24 Q. That is Exhibit A to the protective order 25 signed by Mr. Dowling; is that correct?</p>

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97 (Pages 382 to 384)

<p style="text-align: right;">382</p> <p>1 A. Yes.</p> <p>2 MR. FONTECILLA: No further questions from</p> <p>3 me.</p> <p>4 Folks on the phone? They're not on the</p> <p>5 phone anymore. Okay. So...</p> <p>6 MR. MURRAY: No questions.</p> <p>7 THE VIDEOGRAPHER: This concludes today's</p> <p>8 deposition of Brian Dowling. Master disks of</p> <p>9 today's deposition will be held in the custody of</p> <p>10 Henderson. The time is now 6:12 p.m. We are now</p> <p>11 off the record.</p> <p>12 MR. MURRAY: We are designating this highly</p> <p>13 confidential under the protective order and we don't</p> <p>14 waive signature.</p> <p>15 (Ending time: 6:12 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">384</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 Henderson Litigation Services Assignment No. 33494</p> <p>5 Case Caption: Processed Egg Products Antitrust</p> <p>6 Litigation</p> <p>7</p> <p>8</p> <p>9 DECLARATION UNDER PENALTY OF PERJURY</p> <p>10 I declare under penalty of perjury</p> <p>11 that I have read the entire transcript of</p> <p>12 my Deposition taken in the captioned matter</p> <p>13 or the same has been read to me, and the same</p> <p>14 is true and accurate, save and except for changes and/or</p> <p>15 corrections, if any, as indicated by me on the</p> <p>16 DEPOSITION ERRATA SHEET hereof, with the understanding</p> <p>17 that I offer these changes as if still under oath.</p> <p>18</p> <p>19 Signed on the _____ day of _____, 20____.</p> <p>20</p> <p>21</p> <p>22 _____ BRIAN DOWLING</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">383</p> <p>1 I, JANIS JENNINGS, CSR No. 3942, Certified</p> <p>2 Shorthand Reporter, certify:</p> <p>3 That the foregoing proceedings were taken</p> <p>4 before me at the time and place therein set forth, at</p> <p>5 which time the witness was duly sworn by me;</p> <p>6 That the testimony of the witness, the</p> <p>7 questions propounded, and all objections and statements</p> <p>8 made at the time of the examination were recorded</p> <p>9 stenographically by me and were thereafter transcribed;</p> <p>10 That the foregoing pages contain a full, true</p> <p>11 and accurate record of all proceedings and testimony.</p> <p>12 Pursuant to F.R.C.P. 30(e)(2) before</p> <p>13 completion of the proceedings, review of the transcript</p> <p>14 [X] was [] was not requested.</p> <p>15 I further certify that I am not a relative or</p> <p>16 employee of any attorney of the parties, nor financially</p> <p>17 interested in the action.</p> <p>18 I declare under penalty of perjury under the</p> <p>19 laws of California that the foregoing is true and</p> <p>20 correct.</p> <p>21 Dated this 18th day of April, 2014.</p> <p>22</p> <p>23</p> <p>24 JANIS JENNINGS, CSR NO. 3942</p> <p>25 CLR, CCRR</p>	

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